

PR

TAR

THE
PRINCIPLES OF THE LAW OF COSTS

1234
AND

305

DIGEST OF CASES APPLICABLE THERETO,

WITH

TARIFFS OF FEES, PRECEDENTS OF BILLS
OF COSTS, AND FORMS.

ALSO MISCELLANEOUS TARIFFS OF FEES.

BY

J. A. C. CAMERON, B.A., LL.B.,

OF OSGOODE HALL, BARRISTER-AT-LAW,
ONE OF THE EXAMINERS AT THE ONTARIO LAW SCHOOL, ETC.

TORONTO:

CANADA LAW BOOK COMPANY,
LAW BOOK PUBLISHERS, 32 TORONTO ST.

1901.

KA 98

C 34

231143

ENTERED according to the Act of Parliament of Canada, in the year of our
Lord one thousand nine hundred and one, by J. A. C. CAMERON, in
the Office of the Minister of Agriculture.

TABLE OF CONTENTS.

Preliminary	iii
Table of Cases cited.....	ix

PART I.

PRINCIPLES OF THE LAW OF COSTS AND DIGEST OF CASES, APPLICABLE THERETO, UNDER THE FOLLOWING HEAD- INGS, ALPHABETICALLY ARRANGED.

Absconding Debtors.....	1
Abortive Proceedings	1
Abandoned Motions	2
Abstract of Title.....	3
Actions on Bond.....	4
Actions, etc., Dismissed with Costs	5
Adjournments at Chambers, etc.....	5
Adjournments of Trial.....	5
Administration Actions.....	6
Admissions	8
Advertisement of Sale.....	11
Affidavits	11
Alimony Actions.....	14
Amending Pleadings	15
Appeal as to Costs, and Appeal Proceedings Generally.....	18
Apportionment of Costs.....	31
Appeal Books.....	31
Arbitrations	34
Attendances	37
Assignee	38
Attaching Debts.....	41
Arrest.....	43
Award.....	44
Bill of Costs	44
Bonds.....	45
Briefs.....	47
Case Remitted to County Court	48
Certificates	49
Certiorari.....	49
Champerty.....	50
Charging Orders	51
Continuing Proceedings	54
Contribution Between Co-Defendants.....	54
Commission in Lieu of Costs.....	54
Commission to Take Evidence.....	55
Compromise to Defeat Solicitor's Lien.....	56
Copies	56
Costs Generally.....	59
County Court Action on Mortgage.....	69
Counter-claim	69
Counsel Fees	70
Correspondence.....	73
Creditors' Relief Act.....	74
Crown Costs, for or against.....	75

Debtors	75
Defendants (Costs Between Themselves)	76
Defendants Severing	76
Defendants Withdrawing Defence	78
Disallowing Costs	78
Disbursements	79
Discontinuance	80
Discretion as to Costs	81
Ditches and Water Courses Act	88
Documents	88
Dower	89
Drainage Actions	90
Evidence	91
Entry for Trial	92
Examination for Discovery	92
Ex parte Application	96
Execution	96
Expert Evidence	96
Fees	97
Fiats	98
Folio	98
Garnishee	98
Gross Sum in Lieu of Costs	99
Guardian	99
Habens Corpus	100
Inferior Court Actions, brought in High Court	100
Injunctions	101
Improperly Incurred Costs	102
Inspection of Documents	103
Inspector's Costs	103
Instructions	104
Interest	105
Interlocutory Costs	107
Interpleader Actions	110
Issues	111
Investment of Money	111
Joinder	113
Judgment Debtor	113
Judgment without Trial	113
Judgment on Confession of Defence	114
Judgment for Costs	114
Jury Trials	114
Jury Fees	114
Justice of the Peace	115
Land Titles Act	116
Letters	117
Letters Rogatory	118
Libel	118
Lien for Costs	122
Liquidator	125
Liquor License Act	125
Maintenance	126
Maps	127
Mandamus	128
Master	128
Mechanic's Lien	129
Mileage	131
Misjoinder	132
Models	132
Moderation of Solicitor's Costs	133

TABLE OF CONTENTS.

v

Motions	133
Mortgage Actions	135
Next Friend	138
New Trial	139
No Order as to Costs	140
Non-payment of Costs	140
Non-suit	140
Notices	140
Notice of Action	142
Official Guardian	144
Orders	145
Over-caution	146
Over-holding Tenants Act	146
Partition Actions	147
Payment into Court and out of Court	148
Party and Party Costs	149
Perusals	150
Plaintiffs, Joinder of	150
Plans	150
Pleadings	151
Poundage	152
Postponing Trial	152
Practising without Certificate	152
Prosecuting or Defending in Person	153
Provincial Elections	153
Prohibition	153
Quashing Convictions	154
Quashing Titles	154
Quo Warranto	155
Record	155
Chattel Mortgage	53
Confession of Defence	53
References	155
Retaining Fee of Solicitor	156
Revision of Taxation	160
Rogatory Letters	162
Reviving Actions	162
Scale of Costs	162
Security for Costs	166
Set-off of Costs	181
Settlement of Action	185
Sovering Defences	186
Sheriff's Fees	189
Slander	192
Solicitor	192
Solicitor and Client	205
Statute of Frauds	214
Stay of Proceedings	215
Stenographer's Fees	215
Stop Orders	216
Supreme Court	217
Taxation	217
Tender	256
Term Fees	258
Third Party Costs	258
Title to Land Brought into Question	263
Trial	263
Unnecessary Costs	264
Vesting Orders	269
Vexatious Proceedings	268

Vouchers	269
Vendor and Purchaser	269
Want of Parties	271
Witnesses	272
Writ of Summons	283

PART II.

PRECEDENT OF BILL OF COSTS.

1. Plaintiff's Costs, where Judgment Obtained in Default of Defence, to a Specially Endorsed Writ.....	285
2. Plaintiff's Costs, where Judgment Obtained in Default of Appearance, to a Specially Endorsed Writ.....	286
3. Plaintiff's Bill of Costs, on Judgment, under Ontario Rule 608.....	287
4. Plaintiff's Bill of Costs, on Judgment, under Ontario Rule 603.....	289
5. Plaintiff's Bill of Costs on Interlocutory Judgment where Damages Assessed	290
6. Bill of Costs of Sale, by Virtue of Power of Sale, under Mortgage	292
7. Costs of a Solicitor Opposing an Application, to Tax his Bill of Costs, under the Ontario Solicitor's Act.....	294
8. Bill of Costs of Party Examined for Discovery.....	296
9. Bill of Costs of Party Examining for Discovery	296
10. Plaintiff's Costs of an Issue.....	296
11. Plaintiff's Costs of an Ordinary Action	298
12. Plaintiff's Costs of the Day	302
13. Defendant's Costs of the Day	304
14. Defendant's Costs of Defending an Ordinary Action.....	305
15. Special Case, Plaintiff's Costs.....	306
16. Special Case, Defendant's Costs	307
17. Defendant's Bill of Costs on Quashing a Conviction	308
18. Bill of Costs of Appellant on Appeal to the Supreme Court of Canada.....	309
19. Respondent's Bill of Costs Opposing Appeal to the Supreme Court of Canada	310
20. Bill of Costs of Amendment of Pleadings	311
21. Costs of an Appeal to a Judge in Chambers of Party Moving.....	311
22. Bill of Costs Opposing Appeal to a Judge in Chambers	312
23. Costs of an Application for Leave to Appeal to the Privy Council.....	313
24. Appellant's Costs of an Appeal to the Privy Council	315
25. Respondent's Costs of an Appeal to the Privy Council.....	317
26. Plaintiff's Costs of a Foreclosure Action where there are no Subsequent Incumbrances, and Judgment Obtained on Præcipe	319
27. Plaintiff's Costs of a Foreclosure Action where there are Subsequent Incumbrances and Judgment Obtained on Præcipe	321
28. Plaintiff's Costs of an Action for Sale under Mortgage where there are Subsequent Incumbrances and Judgment Obtained on Præcipe	322
29. Plaintiff's Costs of an Action for Sale under Mortgage where there are no Subsequent Incumbrances and Judgment obtained on Præcipe	325
30. Plaintiff's Costs of a Foreclosure Action where Judgment is Obtained After Trial	325
31. Plaintiff's Costs of an Action for Sale under Mortgage where Judgment is Obtained After Trial.....	325

TABLE OF CONTENTS.

vii

32. Plaintiff's Costs of Reference After Trial.....	326
33. Costs of an Ex parte Application in Chambers	327
34. Costs of an Ex parte Court Motion	327
35. Appellant's Costs of an Appeal from the High Court of Justice to a Divisional Court.....	328
36. Respondent's Costs of Opposing an Appeal from the High Court of Justice to the Divisional Court	329
37. Appellant's Costs of an Appeal from a County Court to the Divisional Court.....	330
38. Respondent's Costs of Opposing Appeal from a County Court to the Divisional Court.....	331
39. Costs of an Appeal from the High Court of Justice to the Court of Appeal.....	332
40. Costs of Opposing Appeal from the High Court of Justice to the Court of Appeal.....	334
41. Cost of a Chamber Motion of Party Moving.....	335
42. Cost of a Chamber Motion of Party Opposing.....	337
43. Cost of a Court Motion of Party Moving.....	338
44. Cost of a Court Motion of Party Opposing.....	339
45. Plaintiff's Costs of an Application for security of Costs.....	340
46. Defendant's Costs on an Application for Security for Costs....	341
47. Bill of Costs of Obtaining Order to Tax Solicitor's Bill of Costs and Costs of the reference.....	343

PART III.

MISCELLANEOUS TARIFFS.

1. Tariff of Fees to be paid to Registrar of Supreme Court of Canada.....	345
2. Solicitor's Tariff, Supreme Court of Canada.....	345
3. Tariff of Fees of Sheriffs and Coroners in Supreme Court of Canada.....	346
4. Surrogate Court Tariff, Registrar's Fees and Disbursements..	347
5. Surrogate Court Solicitor and Counsel Tariff.....	349
6. Table of Fees of Justices of the Peace and their Clerks.....	353
7. Fees of Arbitration.....	354
8. Division Court Tariff.....	354
9. Fees under Land Titles Act.....	358
10. Costs of Distress or Seizure of Chattels.....	360
11. Heir and Devisee Commission Fees.....	361
12. Fees to be received by Sheriffs, Coroners, Clerks of the Peace and Criers, in the Administration of Justice.....	362
13. Clerk's Fees under Act Respecting Mortgages and Sales of Personal Property.....	370
14. Tariff of Fees on Investigation of Fires by Coroners.....	370
15. Exchequer Court Tariff.....	371
16. Sheriff's Tariff.....	374
17. Table of Fees to be taken by the Registrars, Marshalls and Practitioners in Admiralty Proceedings in the Exchequer Court of Canada.....	378

PART IV.

Ontario Tariffs "A," "B," and "C.".....	385
---	-----

PART V.

British Columbia Tariffs.....	405
-------------------------------	-----

PART VI.

Manitoba Tariffs.....	419
-----------------------	-----

PART VII.

Nova Scotia Tariffs.....	431
--------------------------	-----

PART VIII.

APPENDIX OF FORMS.

1. Appointment to Tax Costs.....	453
2. Certificate of Taxation.....	453
3. Objections to Taxation.....	453
4. Form of Certificate under Criminal Code, 898.....	454
5. Warrant of Distress for Costs of an Appeal against a Conviction, or Order.....	455
6. Bond Security for Costs of Action.....	456
7. Affidavit of Justification for Appeal Bond.....	457
8. Affidavit of Execution.....	458
9. Bond for Security of Costs of an Appeal to the Supreme Court of Canada.....	458
10. Affidavit of Execution.....	459
11. Affidavit of Justification by Sureties.....	459
12. Affidavit of Disbursements.....	460
13. Judgment for Costs.....	461
14. Judgment for Defendant's Costs on Discontinuance.....	461
15. Judgment for Plaintiff's Costs after Confessing Defence.....	462
16. Judgment for Costs after Acceptance of Money Paid into Court.....	462
17. Judgment for Plaintiff's Costs.....	463
18. Judgment for Defendant's Costs.....	463
19. Judgment Allowing Set-off of Costs.....	464
20. Judgment for Costs out of Estate.....	464
21. Order for Security for Costs of Action.....	465
22. Certiorari Actions, Notice in.....	466
23. Order on Client's Application to Tax Solicitor's Bill.....	466
24. Order on Solicitor's Application to Tax Bill of Costs.....	467
25. Order to Tax after Action brought.....	468
26. Charging Order.....	469
27. Order to Tax Solicitor's Bill.....	469
28. Order to Tax Bill of Costs on the Application of Client.....	470
29. Order to tax Bill of Costs on the Application of Solicitor.....	470
30. Order for Delivery and Taxation.....	471
31. Affidavit of Non-payment of Costs.....	471
32. Writ of Fieri Facias on a Judgment or Order for Costs.....	472
33. Writ of Fieri Facias to make Costs taxed to Defendants.....	473

Abt
Ade
Ads
Æti
Agt
Agr

Ahr
Ait
Aki
Ala
Alle
Alle
Alle
Alle
Alle

Alle
Ale

Ame
Anc

And
And
Antl
Arel
Arel

Arm
Amc
Arm
Arm
Arse
Athc
Atla

Atto
Atto
Atto
Atto
Atto

Atto
Aust

Babe
Baile

TABLE OF CASES CITED.

A.

Abud v. Riches, 43
 Adelaide, Re Township of, 163
 Adams v. McBeath, 251
 Aetna Insurance Co., In re, 8, 99, 129
 Agnew v. Plunkett, 74, 118, 241
 Agricultural Ins. Co. v. Sargent, 28, 202, 250
 Ahrbecker v. Frost, 111
 Aitcheson v. Mann, 66
 Akin v. Dunbar, 3
 Alaska v. Macaulay, 178
 Allen v. Mathers, 51
 Allen v. Clougher, 21, 165
 Allen v. Aldridge, 213
 Allen v. Mathers, 258
 Allen v. Voxall, 276
 Allenby & Weir, Solicitors, In re, 8, 146, 188, 267, 268
 Allenby, Re, 222
 Alexander v. School Trustees of Gloucester, 9, 37, 104, 242, 247, 274, 275
 America Tobacco Co. v. Guest, 20
 Ancient Order Foresters, In re, and Castner, 111, 175
 Andrews v. Barnes, 44
 Andrews v. London, 113, 182
 Anthers v. Dewar, 60
 Archer v. Severn, 105, 106
 Archibald v. DeLisle, 25
 Armour v. Kilmer, 51, 193
 Amon v. Bobbett, 70
 Arnold v. Van Tuyl, 23, 177
 Armstrong v. Darling, 36
 Arscott v. Lilley, 36
 Athol v. Williamson, 171
 Atlas v. Miller, 69
 Attorney-General v. Newcastle, 74
 Attorney-General v. Butcher, 27
 Attorney-General v. Williamson, 74
 Attorney-General v. Gooderham, 97
 Attorney and Solicitors Acts, In re, 51, 193
 Attorney. In re, 68, 123, 199
 Austin v. Jackson, 52

B.

Babcock v. Standish, 20, 81, 164, 185, 238
 Baile, In re, 52

Bain v. Attorney-General, 154
 Baker v. De Lisle, 31
 Baker, Re, 49
 Baker v. G.T.R., 140
 Baker v. Vokes, 263
 Baldwin v. Quinn, 4, 46, 103, 141, 146, 222
 Baldwin v. McQuire, 12, 58, 238
 Balfour v. Drummond, 186
 Ball v. Warwick, 123
 Ball v. Crompton Corset Co., 226, 275
 Bank of Hamilton v. Baine, 1
 Bank of Hamilton v. Stark, 5
 Bank of Hamilton v. Ryan, 25
 Bank of Hamilton v. Kelly, 109
 Bank of London v. Guarantee Co., 20, 149
 Barker v. Morton, 31, 104
 Bartram v. London Free Press, 122, 178, 179
 Barrett v. Campbell, 77, 189
 Barrett v. Hardley, 136
 Barrett, Ex parte, 212
 Barton v. Baldwin, 184
 Barrow, Re, 212
 Barry v. Exchange, 3, 135
 Barry v. Hartley, 81
 Batley v. Kynoch, 80, 127, 151, 221, 280
 Battisby v. Whitherspoon, 165
 Baskerville v. Vose, 83
 Bayley v. Beaumont, 280
 Beard v. Credit Valley R.W. Co., 3, 261
 Beatty v. Haldan, 133
 Beatty v. O'Connor, 188
 Beatty v. Toronto, 219, 243
 Beaufort v. Ashburnham, 243
 Beckett v. Stiles, 84
 Beddall v. Maitland, 114
 Beers v. Colleston, 170
 Belcher v. Williams, 7
 Bell v. Wilson, 65
 Bell v. Landon, 66, 72, 181
 Bell v. Taylor, 68, 123, 199
 Belmonte v. Aynard, 111, 175
 Bennett v. Empire Printing Co., 119
 Benson v. Schneider, 281
 Berginann v. McMillan, 76
 Bertram v. Massey, 111, 182
 Berry v. Mullen, 194
 Bethune v. Calcutt, 136
 Beynon & Co. v. Godden & Sons, 262

Biggs, Re, 68, 123, 199
 Bishop v. Strachan, 241
 Bissett v. Strachan, 2
 Blake v. Toronto Brewing Co., 61
 Blakey v. Lathan, 67, 109, 122, 198
 Blakeley v. Ingram, 86
 Blakely v. Hall, 102
 Blair v. Cordner, 106
 Blythe v. Franschawe, 211
 Bobock v. Peters, 70, 130
 Bodine v. Howe, 24, 194
 Bond v. Conmee, 142
 Booth v. Briscoe, 194
 Bostock v. N. S. Ry., 259
 Boswell v. Coaks, 189
 Boulton v. McNaughton, 12
 Boulton v. Switzer, 12, 132
 Boulton, Re, 125
 Bowles v. Johnston, 276
 Bowey v. Bell, 264
 Boyd v. Robinson, 46
 Boyd v. Dominion Cold Storage Co.,
 60, 125
 Boynton v. Boynton, 162
 Bozen v. Bolland, 68, 123, 199
 Bradford, Re, 19
 Bradlaugh v. Newdigat, 50, 126
 Bready v. Robertson, 116, 119
 Bridgman, Re, 196
 Broad and Broad, Re, 211
 Brocas v. Lloyd, 276
 Broek v. Tew, 11
 Brook v. Stone, 136
 Brook v. Israel, 264
 Brough v. Brantford, 101
 Brown v. Porter, 5, 66, 152, 260
 Brown v. Brown, 6, 55, 147
 Brown v. Trotman, 52
 Brown v. Nelson, 68, 123, 182, 199
 Brown v. Sewell, 73, 103, 141, 240
 Brown v. Hose, 101, 162
 Brown v. Shaw, 134
 Brown v. Neff, 148
 Brueford v. Griffin, 239
 Brunton v. Hardy, 55
 Bryce v. Loutet, 268
 Budgett v. Budgett, 73, 240
 Bull v. Harper, 13
 Bull v. North British, 109
 Burnaby v. Gardiner, 161
 Butterfield, Re, 132, 212, 251
 Buttin v. Williams, 1
 Butterfield v. Wells, 159
 Bywater v. Dunne, 140

C.

Call v. Collins, 239
 Cameron v. Campbell, 65
 Cameron v. Heighs, 106

Cameron & Lee, Solicitors, Re, 157, 158
 Campbell v. Campbell, 6, 147
 Campbell, Re, 106
 Campbell v. Dunn, 108
 Campbell v. McDougall, 188
 C. P. R. v. Grant, 68, 123, 199
 Cahan, In re, 28
 Canhan v. Neale, 99
 Card v. Weeks, 171
 Carlisle v. Roblin, 3, 37, 48, 70, 71,
 72, 222, 249, 275
 Carty v. London, 132, 243, 246, 273, 275
 Carroll v. Booth, 139, 263
 Carter v. Stubbs, 131
 Carruthers v. Armour, 102
 Carruthers v. Waterous, 170
 Cary v. Cumberland, 9
 Cashin v. Craddock, 11
 Casey v. Morden, 249
 Cass v. Poyser, 96
 Cassie, Re, 140
 Caston v. Scott, 170
 Central Bank, Re, 145
 Chapman v. Newell, 25
 Charlebois v. G. N. Ry. Co., 170
 Chick v. Toronto Elect'c Light Co., 149
 Christopher v. Noxon, 2, 13, 273, 275
 Christie v. Christie, 7
 City of St. John v. Christie, 143
 Clarke v. Lancelley, 3
 Clark v. St. Catherines, 181
 Clark v. Virgo, 30, 67
 Clark v. Rama Timber Co., 181
 Clark, Re, 67, 122, 152, 193, 198
 Clark v. Eccles, 68, 123, 199
 Clarke v. Creighton, 70, 96, 158
 Clarke & Holmes, Re, 107, 109
 Clouster v. McLean, 128
 Clemons v. St. Andrews, 215
 Cline v. Cross, 28
 Cobb v. Warner, 215
 Cock v. Bliss, 68, 122
 Cockle v. Joyee, 160
 Coddard v. Farr, 11
 Colborne v. Thomas, 55
 Colechester North, Re Township of, 163
 Collins v. Welsh, 84, 263
 Colmer v. Ede, 68, 123, 199
 Colquhoun, *Ex parte*, 77
 Commercial Bank v. Scott, 39
 Commissioners of Railways v.
 O'Rourke, 73
 Conger v. McKechnie, 58
 Conmee v. Weidman, 65, 120, 121, 180
 Conmee v. N. A. R., 73, 239, 245, 274
 Connolly v. Hill, 77, 82, 218
 Consolidated Electric Co. v. Platt, 30
 Cook v. Broomhead, 213
 Cooledge v. Bank of Montreal, 96
 Cooper v. Whittington, 23, 64, 81, 85

Cop
 Corl
 Cori
 Corj
 Cost
 Cott
 Cou
 Cou
 Cou
 Cou
 Cow
 Cow
 Cox
 Cox
 Crad
 Crar
 Crav
 Crav
 Crav
 Crea
 Cree
 Crei
 Crei
 Crei
 Creer
 Crof
 Croc
 Crot
 Cuel
 Curt
 Cuth
 Cuth
 Doyl
 Dam
 Dam
 Dani
 Daul
 Davi
 Daw
 Daw
 Day
 Dear
 Delu
 Deni
 Deni
 Dewi
 D'H
 Dick
 Dick
 D'Iv
 Dobs
 Dood
 Dom
 Dom
 Dom

TABLE OF CASES CITED.

xi

- 158 Copeland v. Blenheim, 112, 65, 111
 Corby v. Roblin, 13
 Cordingly v. Johnston, 175, 177
 Corporation of Bruce v. McLay, 143
 Cosmopolitan Life Ass. Co., Re, 271
 Cottingham v. Cottingham, 139
 Cousineau v. Park, 169, 240, 247
 Cousineau v. London Ins. Co., 210, 211, 245
 71, Court v. Berlin, 200
 Cowan v. Patterson, 170
 175 Cowan v. Cuthbert, 175
 Cox v. Hamilton Sewer Pipe Co., 142
 Cox v. Peachy, 86
 Craddock v. Piper, 70, 184
 Cranston v. Blair, 142, 250
 Crawcour v. Salter, 272
 Crawford v. Broddy, 26, 91
 Crawford v. Lundy, 77
 Crearer v. Halbert, 132
 Green v. Wright, 83
 Creighton v. Cook, 1
 Creighton v. Sweetland, 176
 Creighton v. Daniels, 191
 Cremetti v. Crom, 43
 49 Croft v. Joary, 65
 75 Crooks v. Tp. of Ellice, 90, 91
 Crothers, Re, 214, 238, 249
 Cuerrier v. White, 161, 243, 247
 Curtis v. Sheffield, 31
 Cuthbert v. Commercial Travellers, etc., 68, 122, 199
 Cutler v. Morse, 182

 D.
 Doyle v. Weston, 113, 162
 Dame v. Slater, 3, 4
 Dament v. Hennell, 138
 Daniel v. D'Homme, 1
 Daubney v. Shuttleworth, 134
 Davis v. National, 20, 256
 Dawson v. Dumont, 222
 Dawson v. Sheppard, 258, 262
 Day v. Rutledge, 28, 202
 3 Dean v. Chamberlain, 138
 Delisser v. Towne, 282
 Denison v. Wood, 20, 91, 239
 Denier v. Marks, 179
 Dewhirst v. Pearson, 44
 D'Hormusjee & Co. et al v. Grey, 132, 162
 Dickerson v. Radcliffe, 66
 Dicks v. Yates, 86
 D'Ivry v. World Pub. Co., 30, 134
 Dobson v. Leask, 170, 176, 177
 Doods v. Tuke, 7
 Dominion v. Stinson, 18, 55, 66
 Dominion Bank v. Hefferman, 101, 165
 Dominion Co. v. Stimson, 275
 Donaldson, Re, 136, 253
 Doody, Re, 136
 Douglas, Re, 202
 Dowdell v. Australian Co., 277
 Downey v. Roaf, 25
 Dreschel v. Auer Incandescent Co., 29
 Drury Nickel Co., Re, 129, 171
 Dublin v. Trimleston, 54
 Duffy v. Hanson, 56
 Dwyer v. Victoria Waterworks Arbitration, Re, 36

 E
 Eager v. Jackson, 164
 Eastwood v. Henderson, 122
 East Middlesex Provincial Election, 153, 191
 Eaves v. Darling, 171
 East Stonehouse v. Victoria Brewery, 275
 Edison General Electric Co. v. Bank of B.C., 162
 Edwards v. Daniel, 13
 Edwards v. G. W. Ry. Co., 65, 141
 Edwards v. Pearson, 146, 222
 Ehrmann v. Ehrmann, 118, 162
 Elderton v. Emmens, 282
 Elgie v. Butt, 109
 Ellis v. Walmsley, 3
 Ellis v. Munson, 53
 Ellis v. Desilva, 69
 Ellis v. Monson, 20, 114
 Elliott v. Lodds, 19
 Elliott v. Wilson, 114
 Elston v. Rose, 154
 Emerson v. Gearon, 31
 European Central Ry. Co., Re, 105
 Evans v. Boyle, 170
 Evans v. Gann, 113
 Evans v. Chandler, 162
 Ewing v. Toronto, 258, 262, 263
 Exchange Bank v. Barnes, 178
 Exchange Bank v. Newell, 244

 F.
 Fahey v. Jephcott, 24, 177
 Farquhar v. Robertson, 114
 Farley v. Davies, 156
 Farrer v. Lacey, 136
 Farrell v. Wall, 260
 Farrow v. Austin, 27
 Feaster v. Cooney, 119
 Fenson v. Westminster, 60
 Ferguson v. Frontenac, 25
 Ferris v. Ferris, 15
 Fewster v. Raleigh, 90, 163
 Field v. G. N. Ry., 65
 Field v. Hopkins, 136

Filehett v. Mellon, 166	Georgian Bay Ship Canal Co. v. World Printing Co., 119, 121, 179	Hi
Findon v. Parker, 50, 126	Gibbens v. Phillips, 259	Hi
Fillis v. Conrod, 29	Gibson v. Cook, 30, 87	Hi
Fisher v. Green, 13	Gillard v. Milligan, 40	Hi
Fisher, Re, 19	Gill v. Ellis, 55	Hi
Fitzgibbon v. Scanlan, 27	Gillett v. Kerr, 10	Hi
Fleming v. Toronto, 19	Ginty v. Rich, 43, 76, 113	Hi
Fleury v. Fleury, 55	Girardot v. Welton, 69	Hi
Fletcher v. Field, 44	Glazbrook v. Gillett, 117	Hi
Flett v. Way, 68, 123, 183, 184	Gordon v. Laurie, 44	Hi
Flint v. Jellett, In re, 188	Gordon v. City of Victoria, 105	Hi
Florence v. Mollinson, 20, 64	Gorham v. Gorham, 8, 129, 155	Hi
Flower v. Hartop, 3	Gort v. Rowney, 132, 150	Hi
Flower v. Gardiner, 278	Gosnell v. Bishop, 101	Hi
Ford, Ex parte Colquhoun, In re, 77	Gosfield North, Re Township of, 163	Hi
Forest v. Laycock, 165	Goodfellow v. Shuttleworth, 67	Hi
Ford v. Mason, 145, 157, 211, 214, 239, 248, 249	Goutard v. Carr, 156	Hi
Forget v. Ostigny, 64	Graeme v. Globe Printing Co., 121, 122, 179	Hi
Forster, Re, 61, 252	Graham v. Robson, 8, 128, 267	Hi
Forster, Re, Battisby v. Witherspoon, 165	Graham v. Sutton, 140, 215	Hi
Foster v. Viegal, 182	Grant v. Thompson, 50, 125	Hi
Foster v. Farquhar, 86	Grant v. Winchester, 139	Hi
Foster, Re, 212	Grantham v. Powell, 258	Hi
Foster v. Gamgee, 114	Gray v. Davidson, 69	Hi
Fouchier v. St. Louis, 219, 245	Gray v. Alexander, 110	Hi
Fox v. Toronto, 73	G. W. Advertising Co. v. Rainer, 64, 182	Hi
Fox v. Charlton, 106	Great Northern v. Inett, 134	Hi
Francis v. Francis, 68, 123, 199	Greer v. Young, 52	Hi
Fraser v. Bens, 13	Green v. Wright, 65, 258	Hi
Fraser, Re, 157, 249	Greene v. Briggs, 156	Hi
Fraser v. Halifax, 193	Griffen v. Allen, 3	Hi
Freehold v. McLenn, 268	Griffen v. Hoskyns, 278	Hi
French v. Lake Superior, 191	Griffiths v. Patterson, 31	Hi
Friedburg, The, 15	Grothe v. Peace, 110	Hi
Friedrich v. Friedrich, 27	Groom v. Cheesewright, 53	Hi
Friend v. Young, 200	Gueret v. Young, 265	Hi
Fryer v. Sturt, 13, 132	Guifoye v. Hutchison, 278	Hi
Fuller v. Prentice, 276	Guy v. Churchill, 52	Hi
Fulton v. Vipond, 188	Gwillim v. Law Society. B.C., 205	Hi
G.		Hi
Gabourie, Re, 1	H.	Hi
Gage v. Canada Publishing Co., 57, 146	Hackett v. Bible, 56	Hi
Gage v. Campbell, 80	Haffey v. Haffey, 14	Hi
Gallagher v. Gallagher, 15	Haggart v. Brampton, 31	Hi
Gall v. Collins, 49, 244, 246	Hagger v. Jackson, 46	Hi
Galloway v. Corporation of London, 80, 194	Hague, Re Traders Bank v. Murray, 133	Hi
Galloway v. Keyworth, 28	Hain v. Davey, 259	Hi
Gardner v. Burgess, 226	Hall v. Hogg, 130	Hi
Garland, Re, 68, 123, 199	Hall v. Pilz, 165	Hi
Garnet v. Bradley, 64, 81, 114	Hall v. The Queen, 267	Hi
Gearing v. Robinson, 25, 130	Hall v. Laver, 294	Hi
Geddes & Wilson, Solicitors, Re, 156, 157, 249	Hale v. Bates, 277	Hi
	Hallett v. Meares, 276	Hi
	Hamilton v. Hoekmore, 136	Hi
	Hamilton v. Gore Bank, 191	Hi

- Hamilton Mfg. Co. v. Victoria Lumber Co., 240
 Hamilton v. McCormick, 280
 Ham v. Lasher, 37, 272, 275
 Hamill v. Lilley, 202, 281
 Hamlyn v. Betteley, 148
 Hamlin v. Connolly, 157, 249
 Hammond v. Keachie, 219
 Hanns v. Johnston, 143
 Hansbury v. Drainage Board, 258
 Harbin v. Masterson, 78
 Harding v. Bear, 212
 Harding v. Knust, 275
 Hart v. Ruttan, 1
 Harraed, Re Wilde v. Walford, 68, 123, 199
 Harrison v. Leutner, 3
 Harrison v. Helton, 171
 Harris v. Driscoe, 50, 127
 Harris v. Petherick, 64, 259
 Hart v. Boston Marine Ins. Co., 26
 Hart v. Davies, 148
 Hartman v. Foster, 85
 Harvey v. Divers, 275
 Haslam v. O'Conner, 47
 Hassell v. Stanley, 219
 Hathway v. Doig, 181
 Havey, Re, 7
 Heaslip v. Heaslip, 211
 Henderson v. Bank of Hamilton, 257
 Hendricks v. Hendricks, 6, 7
 Heritage v. Ford, 31
 Henebery v. Turner, 10
 Hett v. Pun Pong, 195
 Henkes, The J. H., 81
 Hepburn v. The Tp. of Oxford, 187
 Heward v. Ridout, 11
 Hicks v. Mills, 28
 Hibber v. Lloyd, 136
 Higgins v. Peppin, 156
 Hiles v. Tp. of Ellice, 90
 Hill v. Hart-Davies, 11
 Hill, Re, 161
 Hodgkinson, Re, 140, 215
 Hodges v. Hodges, 260
 Hogg v. Crabbe, 67, 247
 Hollingsworth v. Hollingsworth, 12
 Holmes v. Braedy, 23, 61, 65, 253
 Hook, Re, 212
 Hoole v. Roberts, 217
 Hope v. Beaty, 106
 Hopkins v. Smith, 67
 Hopton v. Robertson, 142, 249
 Hornick v. Romney, 12, 79
 Horsfall v. Phillips, 175
 Hoskins, Re, 27
 Howard v. Howard, 177
 Howard v. Burrows, 250
 Howard v. Harrington, 36
 Howes v. Barber, 277, 278
 Howell v. Armour, 142
 Humphries, Re, 58, 201
 Hunter v. Strathroy, 59, 86
 Hunter v. Hunter, 109
 Hurd v. Robertson, 4
 Hurd v. Bostwick, 83
 Huyek v. Wilson, 21

 I.
 Ibbottson v. Henry, 143
 Idington, Re, 8
 Inglis v. Guelph Lumber Co., 72
 Ingram v. Ingram, 15
 Ireland v. Pitcher, 115, 244
 Iron Mask v. Centre Star, 26, 103, 260
 Isaac, Re, 189
 Isaacs v. Lowell, 269

 J.
 Jackson v. Randall, 1
 Jackson, Re, 253
 Jackson v. Freeman, 265
 James v. Crow, 260
 Jarvis v. G.W. Ry. Co., 65, 80, 186, 189, 193, 194
 Jenkins v. Davies, 10
 Jessop v. Cusack, 283
 Jewell v. Parr, 282
 Johnston v. Dulmage, 41
 Johnston v. Jenkins, 102
 Johnston v. Kenyon, 164
 Jones v. Rimmer, 13
 Jones v. Curling, 23, 81, 86
 Jones v. Frost, 52
 Jones v. Grace, 142
 Jones v. Miller, 184
 Jones, In re, 198
 Jones v. Tobin, 281
 Joseph v. Henry, 154
 Journal Printing Co. v. McLean, 119
 Joyee v. Canada Publishing Co., 37
 Julius v. Bishop of Oxford, 60

 K.
 Kearney v. Oaker, 144
 Keim v. Yegley, 146
 Kelly v. Wade, 139, 258
 Kelly v. Barlow, 144
 Kelly v. Archibald, 144
 Kelly v. Imperial Loan Co., 250
 Kent v. G.W. Ry. Co., 65, 141
 Kennedy v. Pringle, 128
 Kerr, Re Akers & Bull, 256
 Kevers v. Mitchell, 140
 Kinsey v. Roche, 187
 Knickerbocker v. Ratz, 59, 122, 214, 239, 248

- Knickerbocker v. Webster, 111
 Knight's Will, Re, 27
 Knight v. Gardiner, 68, 123, 199
 Knowles James, Re, 195
 Knox v. Porter, 66
 Koosen v. Rose, 66
 Kynaston v. Mackinder, 264
 Kyle v. Barnes, 1
- L.
- La Bourgayne, 178
 Laffittes, In re, 278
 Laidlaw v. O'Connor, 196
 Laird v. Paton, 4
 Lampton v. Parkinson, 85
 Langtry v. Dumoulin, 49, 161, 244
 Lann v. Church, 68, 123, 199
 Latour v. Smith, 146, 188
 Lavin v. O'Neill, 128
 Lawrason v. Buckley, 269
 Lawson v. Canada Farmer's Ins. Co., 96
 Lea v. Long, 175, 180
 Lee v. Mimico Real Estate Co., 261, 268
 Leeson v. Board of License Commissioners, etc., 143
 Leith v. Irvine, 136
 Lewis v. Lewis, 56
 Lewis, Re, 109
 Lennox v. Star Printing and Publishing Co., 120, 122, 179
 Leonard v. Leonard, 14
 Lewen v. Tremming, 258
 Link v. Bush, 219
 Lipsett v. Perdue, 100, 145
 Livingston v. Rowand, 72
 Lockard v. Waugh, 78
 Lloyd v. Kent, 142, 250
 Losee v. Armstrong, 89
 Lockhard v. Waugh, 189
 Logan v. Kirk, 13, 14, 134, 146, 222, 275
 London v. Westham, 100
 London v. Chorley, 194
 Lonergan v. Royal Exchange Ass. Co. 280
 Long v. Crossly, 15
 Long v. Hancock, 25
 Lopes v. DeTastet, 280
 Loppky v. Hoffer, 154
 Lord v. Kellett, 157
 Lord v. Wardie, 259
 Lount v. Canada Farmers' Ins. Co., 96
 Love, Re, 7
 Lund v. Campbell, 111, 156
 Lydall v. Martinson, 260, 271
 Lynch v. O'Brien, 155
 Lyons, Re, 138
- M.
- Magee v. The Queen, 272
 Magurn v. Magurn, 15
 Mahon v. Gammon, 19, 65
 Malcolm v. Leys, 105, 106
 Mallory v. Mallory, 139
 Malone v. Malone, 89, 187
 Mallins v. Greenway, 194
 Mansell v. Attorney General, 154
 Marsh v. Webb, 28, 201
 Marsten, Re, 106
 Marsten v. Lancashire & Yorkshire Ry. Co., 263
 Martin *qui tam* v. Consolidated Bank, 12
 Mason v. Brentini, 70
 Mason v. Bertram, 143
 Meehan v. Meehan, 134
 Melbourne v. Toronto, 77, 189, 243
 Merchants Bank v. Monteith, 129, 155
 Metcalfe, Township of, et al, 163
 Merchants Bank v. Spark, 188
 Merchants Bank v. Houston, 188
 Merr v. Powall, 39
 Merriden Britannia Co. v. Braden, 65, 78, 186, 189, 193
 Mathews v. Monster, 56
 Mathews v. Livesley, 282
 May v. Thompson, 145
 Mayor of Manchester v. Williams, 119
 Michie v. Reynolds, 106, 152
 Middleweek v. Dearsly, 54
 Mimico Sewer Pipe and Brick Mfg. Co., Re, 184
 Miller v. Beaver Mutual Fire Ins. Co., 21, 165
 Miller v. Archibald, 88
 Miller v. Maedonald, 144
 Mill v. Kirwin, 271
 Mills, Re, 19
 Mills v. Hamilton, 25, 140
 Millington v. Loving, 11
 Mitchell v. Simpson, 44
 Mitchell v. Vandusen, 76, 87
 Moffatt, Re, 203
 Monk v. Benjamin, 73, 245
 Moke v. Township of Osnabruk, 163
 Molsons Bank v. Cooper, 184, 201
 Montague and Tp. of Aldborough, Re, 36, 247
 Moir v. Huntingdon, 19, 145
 Monteith v. Walsh, 188
 Moody v. Bank of Commerce, 68, 122, 199
 Moore v. Wallace, 1
 Moore v. Buckner, 188
 Moore v. McKay, 268, 281
 Moon v. Caldwell, 7, 11
 Mooney v. Joyce, 132
 Mordall v. Palmer, 44

Moi

Moi

Moi

Moi

Moi

Moi

Moi

Moi

Moi

Moi

Moi

Moi

Mu

Mu

My

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Ma

Ma

Ma

Ma

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Me

Morgan v. G. E. Ry. Co., 86
 Morphy v. Fawkes, 165
 Morris v. Armit, 47
 Morison v. Harmer, 281
 Morton v. Hamilton P. and L. Soc., 137
 Morton v. Palmer, 140
 Morton v. G.T.R., 155
 Mosely, Re, 68, 123, 199
 Mostyn v. Mostyn, 212
 Mounsey v. Lonsdale, 134
 Mowatt v. DeLisle, 25
 Moyl v. Sparrow, 54
 Musman v. Borat, 81
 Murphy, Re, 100
 Myers v. Defries, 84, 111

Mc.

McBean v. McBean, 10
 McBeath v. Sinclair, 2
 McBride, In re, 156
 McCallum v. McCallum, 42, 49, 244, 247
 McCardle v. Moore, 188
 McCarthy, Pepler & Co., Re, 96
 McCaughy & Walsh, Re, 203
 McCausland v. Quebec Fire Ins. Co.,
 18, 19
 McClary v. Plunkett, 92, 93
 McClive, Re, 105, 106
 McConnell, Re, 7, 129
 McConnell v. Wakeford, 284
 McCullough v. Clemon, 44
 McCurdle v. Moore, 128
 McCulloch v. Tp. of Caledonia, 163
 Macdonald v. Balfour, 38, 125
 Macdonald, Re, 45
 Macdonald v. World N'wsp'pr Co., 121
 Macdonald v. Worthington, 140
 McDonald v. McMillan, 5
 McDonald v. Cunningham, 186
 McDonald v. McMillan, 260
 McDougall v. Law Soc'y Up. Can., 197
 McDougall v. Gilbert, 171
 McDougall v. Patterson, 60
 McFarlane v. Lister, 52
 McGammon v. Clarke, 80, 96, 97, 127,
 145, 150, 221, 275, 241
 McGarvey v. Strathroy, 61
 McGillicuddy v. McCarthy, 10
 McKay v. McKay, 18
 McKay v. Cummings, 65, 143, 144
 McKay v. Keefer, 97
 McKee v. Mason, 157
 McKee v. Hamlin, 157, 211, 249
 McKean v. Tp. of South Gower, 36, 246
 McLaren v. Canada Central, 106, 110
 McLean v. Evans, 12, 14
 McLean v. Bruce, 12
 McLean v. Grant, 76
 McLean v. Allen, 96

McLean v. Evans, 132, 272, 275
 McLean v. Inland, C. & D. Co., 175
 McLeod v. Emigh, 153
 McMaster v. Kempshall, 269
 McMicken v. Ontario Bank, 48, 118, 274
 McMillan v. Australian, 10
 McMillan, Re, 221
 McMorris, Re, 269
 McNamara v. Kirkland, 131
 McNairn v. Boyd, 83, 84
 McQuire v. Corby, 24, 195
 McRae, Re Estate of, 26
 McRae v. Toronto & Quebec R.W. Co.,
 245
 McVean v. Tiffin, 131
 McWhirter v. Corbett, 176

N.

Nakes v. Gibbon, 277
 Naples, The, 10
 Nelson & Fort Sheppard R. W. Co.
 v. Jerry, 28
 Nelson, Re, 245
 Neville v. Mathewman, 10
 Neville v. Ballard, 53
 Nevill v. Garrett, 274
 Newington v. Levy, 53, 114
 Newton v. Harland, 276
 Nicholl v. Elfred, 259
 Nobel's Explosive Co. v. Jones, 15
 Nolan v. Copeman, 278
 North v. Bilton, 264
 Norris v. Beazley, 113
 Norman, Re, 251
 North v. Fisher, 181
 Nova Scotia Land & Gold Crushing Co.
 v. Balling, 274
 Noyes v. Young, 132
 Nutter v. Holland, 10

O.

Obernier v. Robertson, 144
 O'Brien v. Bull, 266
 O'Callaghan v. Bergin, 112
 O'Connor v. Gemmill, 50, 51, 193, 214
 O'Connor v. Brown, 72
 O'Donohue, Re, 106, 146, 222, 238,
 239, 255
 O'Donohue v. Bourne, 109
 O'Donohue v. Beatty, 255
 Ogilvie v. Small, 250
 Oliver v. Robins, 73
 O'Malley v. Killmallock, 283
 O'Meara v. Barry, 283
 Ontario Forge and Bolt Co. v. Comet
 Cycle Co., 31, 125
 Ontario Silver Co. v. Tasker, 110
 Ontario Bank v. Leacock, 134

- Ontario Industrial, etc., Co. v. Lindsey, 144
 Ormston, Re, 146
 Ormerod v. Thompson, 280
 Orr, Ewing & Co. v. Johnston & Co., 216
 Osborne v. Osborne, 3
 Osborne v. Inkster, 170
 Osborne, Re, 212
 Otway v. Otway, 15
 Outwater v. Mullett, 67, 247
 Owen v. Henshaw, 52
- P.
- Pacaud v. McEwan, 258
 Paquette, Re, 38
 Palgrave Gold Mining Co. v. McMillan, 22, 124
 Peers v. Sneyd, 3
 Paradise v. Bossé, 51, 193
 Pardee v. Glass, 143
 Parkinson v. Atkinson, 279
 Patterson v. Smith, 53, 114
 Pattullo & Corporation of Orangeville, In re, 35
 Pearson's Case, 184
 Peck v. Galt, 134
 Pell v. Daubney, 276
 Peers v. Sneyd, 3
 Peillon v. Brooking, 77
 Perkins v. Beresford, 53
 Pearson v. Ripley, 69
 Petrie v. Guelph Lumber Co., 22, 72, 78, 242, 253
 Peuchen v. Imperial Bank, 5
 Pilgrim v. Southampton & D. R. Co., 47, 48, 80, 127, 151, 221
 Pinkerton v. Easton, 52
 Pinkerton, Re, 202
 Pinkerton & Cook, Re, 214
 Pierson v. Knutsford Estates Co., 52
 Pitt v. Bonar, 54
 Platt v. Blizzard, 3, 4
 Platt v. Snowden, 161
 Platt v. G. T. R. Co., 239, 242, 244
 Platt v. Green, 283
 Plummer v. Caldwell, 164
 Plunkett v. Williams, 279
 Pollock v. City of Toronto, Re, 36
 Polson v. Burke, 155
 Popham v. Flynn, 43, 76, 113
 Porter, Ex parte, 18
 Potter v. Rankin, 132, 275
 Poulin v. Quebec, 25
 Powley v. Whitehead, 134
 Preston v. Klotz, 36
 Preston, Re, 44, 219
 Price v. Barrington, 271
 Price, Re, 7
- Priest v. Russell, 274
 Pringle v. McDonald, 65, 141, 146, 222
 Prun v. Saby, 139
 Purcell v. Bergin, 25, 140
 Fulbrook, Ex parte, 68, 123, 199
 Purdy v. Park, 188
- Q.
- Quay Shing, Re, 100
 Quay v. Quay, 30, 244
 Queen v. Nichols, 50
 Queen v. Ward, 50
 Queen v. McIntyre, 60
 Queen v. McIntosh, 60
 Queen v. Reid, 65, 154
 Queen's College v. Claxton, 135
 Queen & Stonehouse v. Hill, 155
- R.
- Radeliffe v. Hall, 283
 Rae v. Trim, 72
 Ralston, Re, 7
 Rankin v. Mackenzie, 72
 Rattary v. George, 18
 Real and Personal Advance Co. v. McCarthy, 78
 Real Estate Loan Co. v. Molesworth, 182
 Redway v. Webber, 132
 Rubry v. Grant, 7
 Rees v. Metropolitan Board of Works, 135
 Rees v. DeBernardy, 50, 127
 Regina v. Armstrong, 2, 134, 135
 Regina v. Justice of Huron, 3
 Regina v. Starky, 49
 Regina v. Somers, 49
 Regina v. Johnston, 49
 Regina v. Coutts, 49
 Regina v. Coulson, 49
 Regina v. Little, 49
 Regina v. Smith, 50
 Regina v. Westlake, 50
 Regina v. McIntosh, 59
 Regina v. Bradford, 59
 Regina v. Jones, 100
 Regina v. London, 100
 Regina v. Surrey, 128
 Regina v. Westgate, 142
 Regina v. Bank of England, 154
 Remnant, Re, 212
 Rennie v. Block, 57
 Rew v. Anthony, 241
 Reynell v. Sprye, 50, 127
 Rice, Re, 49
 Richards v. Howell, 140
 Richards, In re, 211
 Rideout v. McLeod, 56, 193, 204

Rin
 Rob
 Rob
 Rob
 Rob
 Rob
 Rob
 Rob
 Rob
 Rob
 Roe
 Rog
 Ron
 Ron
 Ros
 Ros
 Ros
 Ros
 Ros
 Ros
 Rot
 Ran
 Rus
 Rus
 Rus
 Rut
 Rya
 Sad
 Sals
 San
 San
 San
 San
 Sari
 Say
 Sca
 Sch
 Smi
 Smi
 Smi
 Smi
 Smi
 Sni
 Sni
 Say
 Soil
 Soil
 Son
 Sou
 Sov
 Spa
 Spe
 Spr
 Spa
 Squ

Ringrove v. Ringrove, 14
 Robb v. Murray, 165
 Roberts v. Coughlin, 24, 177
 Robertson v. Robertson, 12, 97, 146, 222
 Robertson, Re, 222
 Robertson v. Grant, 266
 Robinson, Re, 20, 71, 239, 251, 254
 Robinson v. Chadwick, 81
 Robson v. Kemp, 272
 Robidon v. Harkin, 285
 Rockett v. Chippendale, 64
 Rogers and Farewell, Re, 39
 Rombough v. Balch, 23, 149, 177, 215, 217
 Rondot v. Monetary Times, 13, 21, 55, 72, 275
 Rosebatch v. Parry, 187
 Ross v. White, 25
 Ross, In re, 30
 Ross v. McLay, 58, 122, 123, 199
 Ross and Stabie, Re, 117
 Ross v. Sutherland, 138
 Rothchild, Re, 110
 Runseall v. Hogg, 259
 Russell v. Robertson, 136
 Russell v. Russell, 145
 Rushworth v. Wilson, 281
 Rutter v. Chapman, 57
 Ryan v. Fish, 8, 99

S.

Sadler v. Smith, 13
 Salaman, In re, 198
 Sanford v. Porter, 254
 Sanderson v. Ashfield, 182
 San Francisco v. Martin, 135
 Saner v. Bilton, 70, 185, 240
 Sarnia Oil Co., Re, 145, 270
 Sayer, Re, 6
 Searry v. Wilson, 27
 Sehloemann v. Dowker, 26, 217
 Smith v. Mason, 139
 Smith v. Buller, 149
 Smith v. Effingham, 156
 Smith v. Ancaster Tp., 187
 Smith v. Wills, 240
 Smith v. City of London, 243
 Snider v. Orr, 45, 188
 Snider v. Snider, 134, 188
 Snyder v. Snyder, 265
 Sollery v. Flewker, 279
 Solicitors Re, 13, 132, 198, 200, 251
 Sonneuschein v. Barnard, 102
 Southwick v. Hare, 116
 Sovereign v. Sovereign, 8, 267
 Sparks v. Purdy, 48, 57, 58, 249
 Spencer v. Watt, 20
 Sproule v. Wilson, 61, 101, 105, 106
 Sparrow v. Hill, 255
 Squire v. Pardoe, 135

Stacey v. McIntyre, 139, 258
 Stanstead, Re, Election, 25
 Stark v. Fisher, 30, 161, 244
 Stark v. Reid, 135, 139
 Stark v. Shepherd, 188
 Stark Co., Re, Chas., 271
 St. Aubyn v. Smart, 203
 Stedman v. Webb, 68, 123, 199
 Stephens v. Lord Newborough, 11
 Stevenson v. Stevenson, 14, 188
 Stevenson v. Kingston, 65, 80, 186, 189, 194
 Stewart v. Guelph Lumber Co., 72, 242
 Stock v. Shewan, 139
 Stockes v. Trumper, 213
 Stone v. Lickorish, 136
 Stone v. Hyde, 142
 Strachan v. Ruttan, 141, 270
 Strachan, Re, 154
 Strother, Re, 212
 Struthers v. Greene, 164
 Stuart v. Greenall, 21
 Schwob v. McLaughlin, 2
 Selator v. Colton, 136
 Schriebner v. Parcels, 158, 202
 Scott v. Reburn, 144
 Scottish Ontario Land Co. v. Toronto, 270
 Scully v. Tracy, 137
 Segsworth v. Meriden, 138
 Sharp v. Lush, 37
 Sharp v. Wright, 58
 Sharpnel v. Laing, 70, 185, 240
 Sherlock v. Powell, 24, 131, 177, 179
 Sherlock v. Bamed, 259
 Sherwood v. Campbell, 1
 Shrewsbury (Earl of) v. Trapps, 279
 Siddons v. Lawrence, 84, 264
 Simpson, Ex parte, 18
 Simpson v. Renton, 44
 Simpson v. Horne, 188
 Simmons v. Storer, 161, 255
 Skelton v. Seward, 281
 Skinner, Re, 254
 Sinden v. Brown, 142
 Sklitzky v. Cranston, 102, 268
 Slattery v. Dun & Co., 175
 Smith, Ex parte, Re, 162
 Small v. Henderson, 27, 177
 Small v. Atwood, 279
 Small v. Batho, 280
 Smith v. Smyth, 30
 Smith v. Beal, 38
 Smith v. Bird, 58
 Smith v. Graham, 70
 Smith v. Harwood, 70
 Smith, Ex parte, Re, 118
 Smith v. Stevenson, 121, 179
 Smith v. Williamson, 125
 Stuebing, Re, 60

Stamm v. Dixon, 77
Suckling v. Gabb, 81
Sullivan v. Allen, 43
Summerfeldt v. Johnson, 31, 219
Sutton, Re, 135
Sutherland v. Young, 268
Swan v. Pryor, 3
Swain v. Swain, 110
Swain v. Mail Printing Co., 120, 122, 179
Swain v. Stoddart, 175
Swindell v. Birmingham, 107
Sweeting, Re, 200
Symonds v. Symonds, 148

T.

Tait v. Burns, 73, 273
Talbot v. Poole, 61, 70, 73, 101, 240, 247, 249
Tanner v. Weiland, 177
Taylor v. Cook, 10
Taylor v. Roe, 106
Taylor v. Mayrath, 112
Taylor v. Wood, 139, 197
Teetzel v. Dominion Constr. Co., 32
Thomas, Re, 127
Thompson v. Pearson, 21
Thompson v. Robinson, 113
Thompson v. Williamson, 115
Thompson v. Pearson, 162
Thorp v. Holdsworth, 10
Thorp, Ex parte, 18
Thureson v. Thuresson, 24, 177, 180
Tollemache v. Hobson, 28
Tomlinson v. Northern R.W. Co., 262, 263
Tompins v. Jones, 263
Toronto Electric Light Co. & C.P.R., In re, 22
Torrance v. Torrence, 104, 113, 222
Torrance v. Catchley, 130
Totten, In re, 198, 211
Town of Thornbury v. County of Grey, 36
Townsend v. Smith, 83
Township of Logan v. Kirk, 188
Traders Bank, In re, 133
Tupper v. Wright, 161
Tracy, In re, 137
Tremear v. Lawrence, 41
Trinity College v. Hill, 25
Truax v. Dixon, 64
Trust & Loan Co. v. Hill, 10
Turnbull v. Janson, 281
Turner v. Drew, 67, 122, 198
Turner v. Crozier, 191

U.

Union v. Ingram, 136

V.

Vanalstein v. Harty, 176
Vandewaters v. Horton, 187, 188
Vanluven v. Walker, Re, 25
Vanstaden v. Vanstaden, 13
Vansant v. Village of Markman, 248
Varcon Trusts, Re, 256
Vars v. Gould, 180
Vedder v. Chadsey, 87
Venning v. Stedman, 144
Verratt v. McAulay, 144

W.

Walker v. Gurney-Tilden Co., 186, 193
Walker, Re, 212
Waller v. Claris, 72, 134
Wall v. L. & S. W. Ry., 259
Wallbridge v. Ganjot, 261
Wallis v. Skain, 267
Walmsley v. Mitchell, 84
Walton, v. Apjohn, 142
Wansley v. Smallwood, 3, 145, 188
Watson v. Holliday, 162
Woodell v. Trenouth, 68, 122, 123, 199
Warner v. Davies, 101
Warner v. Mosses, 222
Waring v. Pearman, 156
Warwick, Re Tp. of, et al, 163
Waterland v. Serle, 52
Watson v. Ham, 14
Watt v. Clark, 56
Weegar v. G.T.R., 191
Weaver v. Sawyer, 114, 182
Webster v. Leys, 139
Weeks v. Bonham, 65
Wellbanks v. Conger, 18, 64
Wells v. Trust & Loan Co., 135
Wells, Re, 191
Wells v. Mitcham, et al, 215
Wenham, Ex parte, 194
Westenberg v. Mortimore, 177
Wetherall, Re, 85, 100
Whitechurch, Ex parte, 194
White v. Bourgie, 18
White v. Belfry, 113
White Sewing Machine Co. v. Belfry, 182
White, In re, 198
White v. Hillaere, 213
Whitewood v. Whitewood, 239
Whiting v. Hovey, 25
Wicksteed v. Biggs, 89, 141

TABLE OF CASES CITED.

xix

- Wight v. Shaw, 65
Wilby v. Standard, 31
Wild v. Walford, Re Haræd, 68
Wilkes v. Savnion, 135
Williams, Re, 8
Williams v. Preston, 78, 212
Williams v. Town of Aylmer, 246
Williams v. S. E. Ry. Co., 258, 262
Wilson v. Baird, 9, 140
Wilson v. Beatty, 253
Wilson v. Moulds, 269
Witham v. Vane, 263
Worrall v. Johnston, 199, 123
Worham v. Brady, 263
Wood, Re, 194
Wood v. Fisher, 247
Woodruff v. Canada Guarantee Co., 106
Wright v. Bell, 7, 55, 68, 123, 199
Wright v. Collier, 97
Wright v. Southwood, 100
Wright v. Calvert, 109, 219
Wright v. Wright, 140
Wright v. White, 147
Wright v. Castle, 157
Y.
Yea v. Frere, 211
Yemen v. Johnston, 68, 199
Yorkshire Wagon Co. v. Newport,
et al, 262
Yott v. Hubbs, 74, 118
Young v. Thomas, 18
Young, Re, 38
Young v. Hobson, 67, 68, 122, 123,
181, 199, 219
Young v. English, 68, 123, 199
Young v. Johnston, 68
Z.
Zink v. Zink, 67

PE

mot
the
cost
tiff"
to j
cost
plai
orde
106
23 C
Bair
Will
v. D

I
prov
Judg
for t
for e
v. *Bl*
at th
succe

A
Sher
ACTIO
CEEDI

A
the v

THE
PRINCIPLES OF THE LAW OF COSTS
AND
DIGEST OF CASES.

ABSCONDING DEBTORS.

If any time before the execution issues, it appears, upon motion, that the defendant was not an absconding debtor, at the time of obtaining the attaching order, he shall recover his costs of defence, to be deducted from the amount of the plaintiff's claim for judgment; and the plaintiff shall be entitled only to judgment or execution or the excess, if any, and if the taxed costs of the defendant are greater than the amount of the plaintiff's claim or judgment, defendant shall be entitled to an order for payment of the excess forthwith. *Ontario Rule 1066.* See *Jackson v. Randall*, 6 P.R. 165; *Hart v. Ruttan*, 23 C.P. 613; *Kyle v. Barnes*, 10 P.R. 20; *Bank of Hamilton v. Baine*, 12 P.R. 439; *Moore v. Wallace*, 13 P.R. 201; *Buntin v. Williams*, 16 P.R. 43; *Creighton v. Cook*, 3 N.S.R. 78; *Daniel v. D'Houime*, 21 N.S.R. 341.

ABORTIVE PROCEEDINGS.

It is the general rule that the costs of all proceedings which prove abortive are not taxable unless allowed by a court or a Judge. Where, however, the successful party is not responsible for the proceedings proving abortive, the rule is not applicable, for example: A second trial was rendered necessary in *Copeland v. Blenheim*, reported in 11 P.R. 54, because the jury disagreed at the first trial, and it was held that the party who eventually succeeded was entitled to the costs of the first trial.

As to costs of an abortive sale in mortgage actions. See *Sherwood v. Campbell*, 1 Chy. Ch. 299. See also MORTGAGE ACTIONS, UNNECESSARY PROCEEDINGS and VEXATIOUS PROCEEDINGS.

An order was made by the Master in Chambers, changing the venue from the assizes at Simcoe, for which notice had been

given, to the Chancery Sittings in London. The Judge presiding at those sittings having refused to take the case as it belonged to the Common Law Division:—*Held*, without determining whether the Master's order was a proper one, that the plaintiff was justified in acting on it, and his costs, occasioned by the abortive proceedings, were allowed to him: *Schwob v. McLaughlin*, 9 P.R. 475.

The costs of a trial, which were abortive because the jury disagreed, no order to the contrary having been made by the Judge at the trial, were held taxable against the defendants by the plaintiff, who ultimately succeeded: *Copeland v. Township of Blenheim*, 11 P.R. 54. See *Bissett v. Strachan*, 8 P.R. 211 and 386; *Christopher v. Naxon*, 10 P.R. 149 and 385; *McBeath v. Sinclair*, 23 N.S.R. 342.

ABANDONED MOTIONS.

If a party, who serves a notice of motion, does not set the motion down, he shall be deemed to have abandoned the same, and the opposite party shall be entitled to the costs of the motion without an order. A party who serves a notice of motion may countermand the same by notice served on the opposite party, who shall thereupon be entitled to the costs of the motion. In either of the above cases costs may be taxed without an order, on the production of the motion served, with an affidavit that the motion was not set down, or of the notice of countermand served, and if the costs are not paid within four days from the taxation the party entitled thereto may obtain a præcipe order for payment of the same on filing the certificate of taxation and an affidavit of non-payment of the costs.

Ontario Rule 790 superseding decision in *Regina v. Armstrong*, 13 P.R. 306. An appellant who has served a notice of appeal to the Court of Appeal, who does not give the security provided or does not set the appeal down, shall be deemed to have abandoned the same and the respondent shall be entitled to the costs of the appeal. See *Ontario Rule 821*.

Where a party serving a notice of motion, does not appear on the return, the motion is called an abandoned motion, and the party opposing same is entitled to full costs of opposing the motion (a). Where the party opposing the motion has prepared affidavits in answer to the affidavits filed by the party supporting the motion, but has not filed the affidavits, he is nevertheless entitled to tax the costs of preparing same as part of the costs

of
is
he
ma
(a)
16
11
v.
pu
(18
Col
res
wh
wil
dis
no
and
by
pro
gen
cou
req
but
wit
Bea
the
in
for
taxa
328
of
nece
to o
Ont
v. S
Slat

of opposing the motion (*b*). As a general rule, where a motion is abandoned, if the party opposing intends to apply for costs, he should serve the other party with notice of his intention to make an application for the costs of the abandoned motion (*c*): (*a*) *Barry v. Exchange*, 1 Q.B.D. 77; (*b*) *Harrison v. Leutner*, 16 Ch. D. 559; (*c*) *Akin v. Dunbar*, W.R. 366; *Griffin v. Allen*, 11 Ch. D. 913.

See also *Regina v. Justice of Huron*, 31 U.C.Q.B. 335; *Ellis v. Walsley*, 4 L. J. Ch. 461; *Griffin v. Allen*, 28 W.R. 10.

J., one of the defendants, had bid for and had become the purchaser of a lot of land sold under the provisions of R.S.O. (1877), c. 216, by certain parties claiming to be trustees of the Coloured Wesleyan Methodist Church, whose proceedings in respect to such attempted sale were impeached in the action to which J. was made a party defendant, although he avowed his willingness to withdraw from the purchase, and by his answer disclaimed all interest in the result of the suit, and alleged that no effort had been made by him to have the sale carried out, and he was aware that the same would have to be first confirmed by the members of the said church. At the trial, judgment pronounced setting aside the sale, and ordering the defendants generally to pay costs:—*Held*, varying the judgment of the court, that under the circumstances, a formal disclaimer was not required, and J. was ordered to be paid his costs of the appeal, but the action in Court below was dismissed as against him without costs. *Wansley v. Smallwood*, 11 A.R. 430. See *Beard v. Credit Valley R.W. Co.*, 9 O.R. 616, p. 364.

Though notice of the abandonment of a rule be given yet the party receiving such notice must move to have it discharged, in order to obtain his costs. *Swan v. Pryor*, 3 N.S.R. 13.

ABSTRACT OF TITLES.

Attending the Registry Office for abstract and the fees paid for same, in preparing for litigation, or to prove title are not taxable against the opposite party. *Carlisle v. Roblin*, 16 P.R. 328.

Where the vendor refuses or neglects to verify an abstract of title furnished him, or, refuses or neglects to supply any necessary proof, or document in his power, the Master has power to order the purchaser to do so, at the vendor's expense. See *Ontario Rule 741*. See *Flower v. Hartop*, 8 Beav. 200; *Peers v. Sneyd*, 17 Beav. 151; *Platt v. Blizzard*, 29 Gr. 46; *Dame v. Slater*, 21 O.R. 375; *Osborne v. Osborne*, 18 W.R. 421.

A purchaser may be ordered to pay the costs of the reference, where he acted unreasonably: *Dame v. Slater*, 21 O.R. 375. Where a good title cannot be given, the purchaser is entitled to a lien on the land sold for his costs: *Hurd v. Robertson*, 7 Gr. 142. Also *Platt v. Blizzard*, 29 Gr. 46; *Laird v. Paton*, 7 O.R. 137; *Clarke v. Lancelley*, 10 P.R. 208. See *Ontario Rule 741*.

ACTIONS ON BOND.

Where several actions are brought on one bond, recognizance, promissary note, bill of exchange, or other instrument, or where several actions are brought against the maker and indorser of a note, or against the drawer, acceptor or indorser of a bill of exchange, there shall be collected or recovered the costs taxed in one action only, at the election of the plaintiff, unless the Court otherwise orders; but this provision shall not extend to any interlocutory costs. See *Ontario Rule 1135*. See *Manitoba Rule 929*.

Where it is necessary and proper to bring several actions by one plaintiff, against different defendants altogether involving the same issues the plaintiff, if he succeeds, is entitled to tax separate bills of costs in such action unless the subject matter of the action comes within the provisions of Rule 1135. *Baldwin v. Quinn*, 16 P.R. 248.

In *Boyd v. Robinson*, 20 O.R. 404, the defendant's husband, and wife, executed in favour of the plaintiff, the husband's retiring partner, a bond conditioned to be void if the husband should save, defend and keep harmless and fully indemnify, the plaintiff from all loss, costs, charges and damages, and expense which he might at any time sustain or suffer, or be put to for or by reason of non-payment by the husband of the liabilities of the firm as the same became due, it being the intention and the plaintiff was thereby "indemnified or intended so to be from all and every liability of every nature and kind soever of the said firm."

Judgments were recovered by creditors of the firm against them and the plaintiff now sued the defendants to recover the amount to pay these judgments, although he had not himself paid them:—

It was held that the plaintiff was entitled to have the judgments and costs paid and the amounts necessary, were for that purpose ordered to be paid into court by the defendants; and the plaintiff was awarded costs of the action and of the motion and of the reference necessary.

or
cost
to
ore
jud
ag

at
of
pa
bei
pro
pro
cos
att
sol
to
or

ma
ma

in
inc
ma
tha
wit
app
adj
Mc

has
Ha
79;

ACTIONS, ETC., DISMISSED WITH COSTS.

(BRITISH COLUMBIA.)

British Columbia Rule 885, is as follows:—Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such costs without any order referring the same for taxation, unless the court or a judge, upon this application of the party alleging himself to be aggrieved, prohibits the taxation of such costs.

ADJOURNMENTS AT CHAMBERS, ETC.

British Columbia Rule 772, is as follows:—As to attendances at the Judge's Chambers, where by reason of the non-attendance of any party (unless it be considered expedient to proceed ex parte), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned, without any usual proceeding being made, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

ADJOURNMENT OF TRIAL

The judge has power to postpone or adjourn the trial and may, at, or, after the trial direct that judgment be entered or may adjourn the costs for further consideration.

Motions to postpone the trial should be made where applicable in Chambers, before the expense of preparing for trial has been incurred. The costs of postponing the trial, on account of a material witness will be costs in the cause, if it can be shown that every effort was made to secure the attendance of such witness; but if the application is not made promptly, the party applying may be ordered to pay the costs of the application and adjournment: *Brown v. Porter*, 11 P.R. 250; *McDonald v. McMillan*, 22 Gr. 362.

On a motion to postpone the trial, the Master in Chambers has power to impose terms in granting the application: *Bank of Hamilton v. Stark*, 13 P.R. 13. See *Allen v. Mathers*, 19 C.L.J. 79; *Peuchen v. Imperial Bank*, 20 O.R. 325.

ADMINISTRATION ACTIONS.

Ontario Rule 1146 and *Manitoba Rule 938* provide for costs in administration or partition proceedings and are practically the same. The Ontario Rule is as follows:—In actions or proceedings 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, which commission shall be apportioned among the persons entitled to costs as may seem just. Such commission shall be as follows:

On the first \$500.....	20 per cent.
On every additional \$100, over \$500 and up to \$1,500.....	5 " "
On every additional \$100, over \$1,500 and up to \$4,000.....	3 " "
On every additional \$1,000, over \$4,000 and up to \$10,000.....	2½ " "
On every additional \$1,000 over \$10,000.	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." This Rule was adopted as an aid to fix a solicitor's remuneration without taxation, but where it can be made manifest to the Court that the solicitors engaged were called upon to do an unusual amount of work and to assume large responsibilities, the Court will either increase the commission or order the costs to be taxed as in an ordinary action.

The Master, however, has no power under this Rule to increase the commission or order the costs to be taxed. The application must be made to a Judge of the High Court. See *In re Sayer*, 1 C.L. Times 439; *Hendricks v. Hendricks*, 13 P.R. 79. In *Brown v. Brown*, reported in 3 C.L. Times 595, Proudfoot, J., held that the commission allowed by this Rule is to be calculated on the whole amount accounted for and not on the amount in the hands of the accounting party. See *Campbell v.*

Ca
W
79;soli
me
del
for
foract
esti
spe
Prin
soli
betple
the
Chabo
ord
the
for
taxand
can
ing
set
exp
acti
def
of
P.Rcost
crec
cost

Campbell, 8 P.R. 159; *Belcher v. Williams*, 45 Ch. 63 L.T.; *Wright v. Bell*, 32 C.L.J. 362; *Hendricks v. Hendricks*, 13 P.R. 79; *Re McConnell*, 3 Chy. Ch. 423; *In re Ralston*, 3 N.S.R. 195.

A residuary legatee plaintiff is entitled to costs, as between solicitor and client, where the estate is insufficient for the payment of legacies; provided it is sufficient for the payment of debts: *Re Havey*, 26 Ch.D. 179. Where the estate is sufficient for payment of costs in full the trustees are entitled to an order for payment of their costs: *Dodds v. Tuke*, 25 Ch.D. 617.

The costs of plaintiffs and defendants in an administration action, are, in so far as the personal estate and residuary real estate proves insufficient to satisfy such costs, payable out of specifically devised real estate in proportion to their value: *Re Price*, 31 Ch.D. 485.

A trustee or executor who has been guilty of no misconduct in defending or prosecuting the action is entitled to have his solicitor's costs paid out of the estate. The costs to be as between solicitor and client: *Re Love*, 29 Ch.D. 348.

Costs occasioned by unnecessary and scandalous matter in pleadings and affidavits will, as a rule, be ordered to be paid by the party offending, as between solicitor and client: *Christie v. Christie*, 8 Ch.D. 899; *Rubry v. Grant*, 13 Eq. 443.

Where it can be shown, that the commission provided by the above rule would be clearly inadequate, the judge has power to order the costs to be taxed. It would also appear, that where the commission is more than sufficient to remunerate the solicitor for the work done, the judge has power to order the costs to be taxed.

In an administration action which was commenced by writ, and not by notice, as provided, upon taxation only such costs can be taxed, as would have been taxed had he taken his proceedings in the proper manner. The defendant claimed to tax and set off the additional costs incurred by reason of the less expensive procedure not being adopted. He did not in the action object to the procedure adopted. It was held that the defendant's additional costs had not been occasioned by reason of the plaintiff's improper procedure: *Moon v. Caldwell*, 15 P.R. 159.

In administration proceedings as the amount of the creditor costs are generally small, it is usual to allow a lump sum to the creditors entitled to costs. In case of deficiency of assets, the costs of creditors' proving claims, are to be added to their debts;

and such costs are not entitled to be paid in priority to the debts: *Re Aetna Insurance Co.*, 17 Gr. 160. In *Ryan v. Fish*, 4 O.R. 335, a lump sum for costs was awarded to the plaintiff in an action for damages.

If it can be shown that an executor brought an action unnecessarily, he will not be allowed any commission: *Graham v. Robson*, 17 Gr. 318.

Where two or more actions of proceedings are instituted for administration, or partition, or sale, all or any of the costs of any action, or proceeding which has been unnecessarily prosecuted, may be disallowed: O.R. 1147. See *Re Aetna Insurance Co.*, 17 Gr. 160; *Gorham v. Gorham*, 17 Gr. 386.

If instead of applying for a judgment, on notice, the plaintiff unnecessarily issues a writ of summons for administration, he will not be entitled to extra costs thereby occasioned, and such costs cannot be recovered even as between solicitor and client: *Sovereign v. Sovereign*, 15 Gr. 559; *Allenby v. Weir*, 13 P.R. 403; *Re Idington*, 8 P.R. 566.

Upon an appeal from taxation of costs as between solicitor and client where the solicitor was disallowed the additional cost occasioned, by bringing an action on behalf of their client for administration, when the proper and least expensive practice would have been to have made a summary application. *Robertson, J.*, affirmed the decision of the taxing officer: *Allenby v. Weir*, 13 P.R. 403. See also, 14 P.R. 227.

Where the administrators of an estate of a deceased assignee for creditors, defended in good faith an action, brought by his successor in the trust to recover damages for breach of trust, committed by the intestate and being unsuccessful, were obliged to pay the plaintiff's costs and those of their own solicitors, they were held entitled to credit for these payments on passing their accounts.

Where it is plain, that a dispute can be settled only by litigation, it is not necessary for a trustee to ask the advice of the Court before defending.

Judgment of the Surrogate Court of Grey reversed: *In re Williams*, 22 A.R. 196.

ADMISSIONS.

Ontario Rule 269 is as follows:—Each party shall 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
the
the
def
Sch
par
on l
the
whi
for

adu

in s
sior

upo
just
for
bef
has
goo

Rui
Ont

foll
his
of t

doc
neg
suc
ref
unl
tha
ing
exc
of t

app
(E.

give notice by his own statement or otherwise, if he admits for the purpose of the action of the truth generally, or any part of the case stated or referred to in the statement of claim or defence of the opposite or any other party. In *Alexander v. School Trustees of Gloucester*, 11 P.R. 157, it was held that a party was not bound by admissions made by an opposite party on his examination for discovery and that he could properly tax the costs of procuring the attendance of a witness to establish what was admitted by the opposite party on his examination for discovery.

British Columbia Rule 299 makes a similar provision for admissions in pleading.

Manitoba Rule 283 provides for admissions of allegations in statement of defence. As to the manner of making admissions see *Rule 299*.

Ontario Rule 527 is as follows:—A party may be called upon by the other party to admit any document, saving all just exceptions, by a notice to admit which may be according to form No. 63. This notice must be given a reasonable time before trial: *Cary v. Cumberland*, 1 P.R. 140. When notice has been given and the trial adjourned the notice will hold good for the subsequent trial: *Wilson v. Baird*, 19 U.C.C.P. 98.

See *Manitoba Rules 507, 508 and 509*, *British Columbia Rule 300*. Costs occasioned by not admitting are governed by *Ontario Rule 1149*.

The *Nova Scotia Rules* in reference to admissions are as follows:—Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party. (E. 371.)

Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless at the trial or hearing the court or a judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the taxing authority, a saving of expense. (E. 372.)

A notice to admit documents shall be in the form No. 11 in appendix B, with such variations as circumstances require. (E. 373.)

Any party may, by notice in writing, at any time not later than seven days before the day for which notice of trial has been given, call on any other party to admit for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the court or a judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the court or a judge certifies that the refusal to admit was reasonable, or unless the court or a judge at any time otherwise orders or directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion, or in favour of any person other than the party giving the notice: Provided also that the court or a judge may at any time allow any party to amend or withdraw any admission so made on such terms as are just. (E. 374.)

When anything in the course of an action or reference which ought to have been admitted has not been admitted, the party who neglects, or refuses to make the admission, may be ordered to pay the costs occasioned by his neglect or refusal. See *Ontario Rule 1149*. See *Manitoba Rule 940*; *British Columbia Rule 300*.

Unless the omission to give a notice to admit is a saving of expense, the costs of proving a document where a notice to admit was not given will not be allowed. See *Ontario Rules 1150 and 616*, also *Neville v. Mathewman* (1894), 3 Ch. 345; *Nutter v. Holland* (1894), 3 Ch. 408; *Warner v. Davies*, 79 L. T. Jour. 136; *Jenkins v. Davies*, 1 Ch. D. 696; *Thorp v. Holdsworth*, 3 Ch. D. 640; *Gillett v. Ker*, 24 W.R. 428; *The Naples*, 35 W.R. 59; *Trust and Loan Co. v. Hill*, 9 P.R. 8; *Taylor v. Cook*, 11 P.R. 60; *Henebery v. Turner*, 2 O.R. 281; *McGillicuddy v. McCarthy*, 7 C.L.T. 165; *McBean v. McBean*, 11 P.R. 429; *McMillan v. Australian*, 76 L.T. 182.

In an administration action, commenced by writ, the plaintiff was allowed upon taxation, only such costs as would have been taxed had he begun his proceedings by a summary application under *Ontario Rule 965*. The defendant claimed to have taxed to him and set off his additional costs incurred by reason of the less expensive procedure not having been adopted. He had not

in tl
but l
adof

inu
proc
to an
proc
did

the l
119:
P.R.

thro
it be
the
be p
Rid

davi

that
peti
plea
dire
dire
juri
prol
v. L
Cod

in t
Col

nec
is d
pref
Neu
See

in the action admitted the right of the plaintiff to an account, but had pleaded a release, and had not objected to the procedure adopted:—

Held, that the defendant's additional costs had not been incurred by reason of the plaintiff's improper or unnecessary proceedings, but by his own conduct in not admitting the right to an account and in not objecting to the plaintiff's manner of proceeding at the earliest possible stage; and the case therefore did not come within Rule 1195.

Semble, it would have been proper to raise the question at the hearing; but the taxing officer had jurisdiction under Rule 1195, without an order, to "look into" it: *Moon v. Caldwell*, 15 P.R. 159.

ADVERTISEMENT OF SALE.

On account of the advertisement being improperly drawn through the neglect of the party having the conduct of the sale it became necessary to have the advertisement referred back to the Master; it was held that the additional costs incurred must be paid by the party having the conduct of the sale: *Heward v. Ridout*, 1 Chy. Ch. 244.

AFFIDAVITS.

In reference to scandalous and impertinent matter in affidavits, the following is the Ontario Rule applicable (Rule 296).

If upon hearing a case, or matter, the court is of opinion that any pleading, petition, or affidavit, or any part of a pleading, petition, or affidavit, is scandalous, the court may order the pleading, petition, or affidavit to be taken off the file and may direct the scandalous matter to be expunged, and may give such directions as to costs, as may seem just. The court has also jurisdiction to order the affidavit to be taken off the file for prolixity. See *Hill v. Hart-Davies*, 26 Ch. D. 470; *Millington v. Loring*, 6 Q.B.D. 190; *Cashin v. Craddock*, 3 Ch.D. 376; *Coddard v. Parr*, 24 L. J. Chy. 783; *Brock v. Tew*, 18 P.R. 30.

See *Manitoba Rule 316* which makes the same provisions in reference to scandalous matter in affidavits, also *British Columbia Rule 412*.

Where affidavits are filed, and used on a motion, it is necessary to state the fact in the order made when the motion is disposed of, otherwise on the taxation of costs, the costs of preparing the affidavits will be disallowed: *Stephens v. Lord Newborough*, 11 Beav. 403; *Stuart v. Greenall*, 13 Price 755. See cases cited above.

Where the plaintiff's solicitor made six affidavits on production it was held that he was only entitled to the costs of preparing one affidavit, with extra folios for all additional matter in the subsequent affidavits: *Baldwin v. McQuire*, 16 P.R. 248; 15 P.R. 305. See also *Boulton v. McNaughton*, 1 Chy. Ch. 216.

An order for security for costs cannot be obtained under sec. 71 of the Common Law Procedure Act R.S.O. (1877) ch. 50, upon an affidavit made by the defendant's attorney. That section required the affidavits to be made by the defendant personally. An application made upon the affidavit of the solicitor of defendants, a corporation was therefore refused: *Martin qui tam v. Consolidated Bank*, 45 Q.B. 163. See *Hollingsworth v. Hollingsworth*, 10 P.R. 58 & 355.

When there are several deponents to be sworn, or it is necessary for the purpose of any of the affidavit being sworn, to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing authority in his discretion thinks fit. See *Nova Scotia Rule*.

The allowances for instructions and drawing an affidavit in answer to interrogatories, include all attendance on the deponent to settle and read over. See *Nova Scotia Rule*.

No instructions can be allowed for an ordinary affidavit of disbursements. In order that instructions be taxed for an affidavit of disbursements the affidavit must be special; such, for example, as an affidavit accounting for the attendance of and necessity for an expert witness or accounting for not calling a witness, etc. See *Boulton v. Switzer*, 1 Chy. Ch. 83; *McLean v. Evans*, 3 P.R. 154; *Hornick v. Romney*, 11 C.L.T. 329.

Where a party has been served with a subpoena and appointment for examination for discovery and has been paid conduct money, it is necessary to make affidavit of service of the fact. See *McLean v. Bruce*, 12 P.R. 602. See also *Watson v. Ham*, 1 Chy. Ch. 293.

In *Robertson v. Robertson*, 24 Gr. 55, the charge for preparing an affidavit for disbursements was disallowed, because the disbursements mentioned therein were disallowed on taxation.

Affidavits used on an application for increased counsel fees at trial should not be allowed, as the proper officers have now instructions to keep a record of each case tried, such record to state, among other things, the names of the counsels engaged in the case, time occupied by the trial and the number and names of the witnesses sworn on each side.

be d
lays
See
C.L.
abov

Edu

follo
and
seve
stati
sion:
certi
term
canr
to a
whe

clerk

in tl
ther
149:
218:
Ron
Rul

then
plac
the
trav
and
mat
atten
caus
whic
to a
be s
solic

All irrelevant and impertinent matter in an affidavit should be disallowed. In addition, the party filing such an affidavit lays himself open, though successful to be mulcted for costs. See *Vanstaden v. Vanstaden*, 10 P.R. 428; *Corby v. Roblin*, 5 C.L.J.O.S. 225; *Sadler v. Smith*, 7 P.R. 409. See cases cited above. *Jones v. Rimmer*, 20 Ch.D. 1.

As to misdescription, see *Bull v. Harper*, 6 P.R. 52; and *Re Edwards v. Daniel*, 62 L.T. 445.

As to master's default, see *Fraser v. Bens*, 1 Chy. Ch. 71.

In *Fisher v. Green*, 2 C.L.J. (N.S.) 16, Wilson, J., made the following remarks in reference to the use of superlative words and offensive expression in affidavits:—"I regret to find in several instances lately that superlative words are used in stating facts in affidavits. There could be no stronger expressions of the very truth than that it is stated on oath. If less certainty is intended the statement should be qualified. The terms to which I object are: 'I must positively swear, etc.' I cannot 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."

Affidavit of disbursements to be made by solicitor or his clerk having management of cause, or the client.

An affidavit of disbursements shall be made by the solicitor in the cause or matter, or some clerk having the management thereof, or by the client. See *Christopher v. Noxon*, 10 P.R. 149; *Dominion v. Stinson*, 9 P.R. 177; *Fryer v. Sturt*, 16 C.B. 218; *Re Solicitor*, 9 C.L.T. 35; *Locan v. Kirk*, 14 P.R. 130; *Rondot v. Monetary Times*, 18 P.R. 141. See also *Ontario Rules 1174 and 1177*.

The affidavit shall set forth the sums paid to counsel, naming them, and for what service, the names of the witnesses, their places of abode, the places at which they were subpoenaed, and the distance which each such witness was necessarily obliged to travel in order to attend the trial, and the sums paid to them, and shall state that all such witnesses were necessary and material for the client in the cause, or matter, that they did attend and that they did not attend as witnesses in any other cause (or otherwise as the case may be) and the number of days which each witness was necessarily absent from home in order to attend such trial. If a solicitor attends as a witness it shall 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 took place shall be stated. *Ontario Rule 1173*. See *Harding v. Knust*, 15 P.R. 80; *McLean v. Evans*, 3 P.R. 154; *Logan v. Kirk*, 14 P.R. 130.

ALIMONY ACTIONS.

In Ontario the costs in alimony actions are governed by the following rules, viz.:

An application for costs in an alimony action shall not be made until the time for delivering the defence has expired, and costs shall not be ordered to be paid *de die in diem* by the defendant, but only the amount of the cash disbursements, actually and properly made by the plaintiff's solicitor. *Ontario Rule 1144*.

Where 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. *Ontario Rule 1145*.

In British Columbia, by Supreme Court Rules, 958 and 959 no costs are payable daily except disbursements, and if plaintiff fails in his action, disbursements only are to be allowed.

In Manitoba Rules 936 and 937 govern the cost in alimony action, and are practically the same as the Ontario Rules dealing with the subject.

In an alimony action, which is compromised by the parties, the plaintiff's solicitor is not entitled to his costs from the defendant as between solicitor and client, but is only entitled to his cash disbursements: *Ringrove v. Ringrove*, 10 P.R. 299, 596; *Leonard v. Leonard*, 9 P.R. 450 over-ruled.

In *Haffey v. Haffey*, 7 P.R. 137, where an action for alimony had been entered for trial, an adjournment was ordered until the defendant paid to the plaintiff, a sum sufficient to pay the plaintiff's necessary witness fees.

Notwithstanding the provisions of Rule 1144 "that only the amount of the cash disbursements actually and properly made, by the plaintiff's solicitor" a sum was ordered to be paid by the defendant for prospective witness fees; the plaintiff's solicitor giving his undertaking to account for all sums not actually and properly disbursed: *Stevenson v. Stevenson*, 19 P.R. 48.

mak
in a
it c
coun
of t
also
P.R.
P.D.
Act
L.T.

orde
tor;
to t
ame
othe

disc
the

be c
Co.

two
that
the
Wh
cost
ame
enti
plea
mat
and

incl

ings

ings
plea

Ontario Rule 1144, does not give the court authority to make an order for payment to plaintiff's solicitors by defendant in an alimony action of any sum to cover counsel fees; unless it can be shown that the counsel fees are to be paid to a counsel other than the solicitor for the plaintiff, or the partner of the solicitor: *Gallagher v. Gallagher*, 17 P.R. 575. See also *Magurn v. Magurn*, 10 P.R. 570; *Ingram v. Ingram*, 10 P.R. 569; *Ferris v. Ferris*, 70 O.R. 496. *The Friedburg*, 10 P.D. 112. As to the effect of the Married Woman's Property Act on the costs in alimony action, see *Otway v. Otway*, 59 L.T. 153.

AMENDING PLEADINGS.

Either party may amend his pleadings at any time without order, on filing written consent of the opposite party or solicitor; in either case application for leave to amend, may be made to the court or judge or to the judge at the trial, and such amendment may be allowed upon such terms as to costs or otherwise, as may seem just.

By *Ontario Rule 1130*, the costs of amendment are in the discretion of the court or judge and are generally awarded to the party not in default: *Long v. Crossly*, 13 Ch.D. 392.

The costs are sometimes reserved to follow the event and to be disposed of when the merits are tried: *Re Nobel's Explosive Co. v. Jones*, 17 Ch.D. 721, 42 L.T. 754.

Where the amendments require the insertion of more than two hundred words, or where the amendments are so numerous that making them, in the copy filed and served, would make the same difficult to read, a fresh copy must be filed and served. Where this becomes necessary, the solicitor, if he is entitled to costs of the amendment, is allowed ten cents per folio for each amended copy served, and for a copy to file. He is not entitled, however, to 20 cents a folio for drafting the whole pleading, but is only entitled to charge for drafting the new matter inserted at 20 cents per folio. See *Ontario Rule 306* and *Manitoba Rule 325*.

As to amendments generally, see *Ontario Rules 296 to 308* inclusive, and *Manitoba Rules 316 to 327* inclusive.

The Nova Scotia rules in reference to amendment of pleadings are as follow:—

1. The court or a judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement, or pleadings, in such manner and on such terms as may be just,

and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: (E. 309.)

2. The plaintiff may, without any leave, amend his statement of claim, whether endorsed on the writ or not, once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who has last appeared. (E. 310.)

3. A defendant who has set up any counter-claim or set-off may, without any leave, amend such counter-claim or set-off at any time before the expiration of the time allowed him for answering the reply and before such answer, or in case there is no reply, then at any time before the expiration of twenty-eight days from defence. (E. 311.)

4. Where any party has amended his pleading under either of the next two preceding rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the court or a judge to disallow the amendment, or any part thereof, and the court or judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as are just. (E. 312.)

5. Where any party has amended his pleading under rules 2 or 3, the opposite party shall plead to the amended pleading, or amend his pleading, within the time he then has to plead or within eight days from the delivery of the amendment, which ever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment. (E. 313.)

6. In all cases not provided for by the preceding rules of this Order, application for leave to amend may be made by either party to the court or a judge, or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as are just. (E. 314.)

7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid,

or o
void
315.

{
alter
addi
(E. 3

{
same
orde
day
viz. :
date

1
amer
with

1
arisi
time
with

1
term:
just,
neces
mini
proce

1:
pursu
party
order

1.
the I
proce
(1882

Tl
order
ment
which
of the
fit, or
solicit

or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the court or a judge. (E. 315.)

8. An indorsement or pleading may be amended by written alterations in the copy which has been delivered, and by additions on paper to be interleaved therewith if necessary. (E. 316.)

9. Where any indorsement or pleading is amended, the same, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.: "Amended day of pursuant to order of dated the day of ." (E. 317.)

10. Where any indorsement or pleading is amended, such amended document shall be delivered to the opposite party within the time allowed for amending the same. (E. 318.)

11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court or a judge on motion or summons without an appeal. (E. 319.)

12. The court or a judge may at any time, and on such terms as to costs or otherwise as the court or judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings. (E. 320.)

13. The costs of and occasioned by any amendment made pursuant to Rules 2 and 3 of this Order shall be borne by the party making the same, unless the court or a judge otherwise orders. (E. 321.)

14. In appeals brought before it, the court shall have all the powers and duties in reference to the amendment of proceedings which the court has in causes originating therein. (1882, ch. 2, Rule 8.)

The court or a judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if they or he thinks fit, order the costs of the application to be paid as between solicitor and client. (E. 223.)

The British Columbia rules as to amendments are the same as Nova Scotia.

Where it becomes necessary for a party to amend his own pleadings it is the general rule that he must pay all costs of amendments, or occasioned by amendment.

Where the plaintiff has obtained an order allowing him to amend on payment of costs, the costs should be paid before any further proceedings are taken; otherwise the defendant can obtain a stay of proceedings until the costs are paid, and if the costs are not paid within a reasonable time, can have the plaintiff's action dismissed: *White v. Bourgie*, 26 O.R. 312.

As to costs of striking out scandalous matter in any pleading: See *Ex parte Thorp*, 1 Ves. 394; *Ex parte Simpson*, 15 Ves. 476. Costs are, as a general rule, ordered to be paid as between solicitor and client. See cases cited above, and also *Ex parte Porter*, 2 M. & Ayr. 220; *Rattary v. George*, 16 Ves. 232; *Manitoba Rules*, 319 and 320; *McKay v. McKay*, 2 Thom 75 (Nova Scotia).

The British Columbia Rule as to amendments by plaintiff is as follows:

"Where the defendant is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the court at the time of any amendment": *British Columbia Rule*, 783.

APPEAL AS TO COSTS AND APPEAL PROCEEDINGS GENERALLY.

The effect of *Ontario Rule 1120*, combined with sec. 72 of the Ontario Judicature Act, is that, except in cases of trustees, mortgagees, or other persons having any right to costs out of a particular estate or fund, etc., or where the judge has clearly proceeded on a wrong principle, there will be no appeal allowed, in respect of costs, without leave, sec. 72 of the Ontario Judicature Act having prohibited all appeals in respect of costs, which are left to the discretion of the court: *Young v. Thomas* (1892), 2 Ch. 137; *McCausland v. Quebec Fire Insurance Co.*, 25 O.R. 330; *Wellbanks v. Conger*, 12 P.R. 448.

A
Judic
"
upon
left t
except
See I
It
only
an ap
as to
318.
W
costs,
an a
neglig
Maho
Ladd
It
the o
questi
This
ation.
refuss
the S
W
an ap
order
O.R.
It
defen
defen
It
the pl
defen
order,
Court
incur
again
defen
excess
plaint

Appeals as to costs are regulated by sec. 72 of the Ontario Judicature Act, as above stated, which is as follows:

"No order made by the High Court, or any judge thereof, upon consent of parties, or as to costs only, which by law are left to the discretion of the court, shall be subject to any appeal except by leave of the court or a judge making such order. See *Re Mills*, 34 Ch. D. 24; *Re Fisher* (1894), 1 Ch. 450.

In an action where the plaintiff recovers judgment for costs only against the defendant, but no further relief is given him, an appeal from this judgment by the defendant is not an appeal as to costs within this section: *Fleming v. Toronto*, 19 O.A.R. 318.

Where a court has ordered a solicitor, to personally pay the costs, on account of some misconduct or negligence on his part, an appeal will lie on the question whether there has been negligence or misconduct: *Re Bradford*, 15 Q. B. D. 635; *Mahon v. Gammon*, 4 R. & G. 232, Nova Scotia; *Elliot v. Ladds*, 2 Old. 170, Nova Scotia.

In *Moir v. Huntingdon*, 19 S.C.R. 363 it was held that as the only matter in dispute between the parties was a mere question of costs, the court would not entertain the appeal. This was an action to quash a by-law of the defendant corporation. The court refused to quash the by-law. After their refusal the by-law was repealed and the plaintiffs appealed to the Supreme Court of Canada with the above result.

Where the trial judge awards costs on an erroneous principle, an appeal will lie to a Divisional Court from the trial judge's order for costs: *McCousland v. Quebec Fire Ins. Co.*, 25 O.R. 330.

The plaintiff brought a County Court action against the defendant to recover \$140 balance alleged to be due from the defendant for the sale of a chattel.

The defendant paid into court the sum of \$95 in full which the plaintiff accepted in due course. On the application of the defendant the judge of the County Court made a summary order, allowing the defendant to set off his costs, on the County Court scale, in the excess of such costs as he would have incurred if the action had been brought in the Division Court, against the costs of the plaintiffs and the order gave the defendant liberty to enter judgment and issue execution for the excess, if any, of the defendant over the above costs of the plaintiff.

It was held that the plaintiff was entitled to costs on the County Court scale irrespective of the amount paid into court, and accepted by him in full of his claim. The plaintiff being entitled to his costs on the County Court scale by the provision of *Ontario Rule 425* they were not subject to the discretion of the judge as *Rule 425* is not qualified by *Ontario Rule 1130*. Under section 52 R.S.O. ch. 55 (The County Court Act) as a judge's order was in its nature final, an appeal would lie: *Babcock v. Standish*, 19 P.R. 195. See *Bank of London v. Guarantee Co.* 12 P.R. 499; *Spencer v. Watts*, 67 L.T.R. 711; *Davis v. National*, 16 P.R. 119.

In a test case, where special leave was given to the appellant under special circumstances, notwithstanding the small amount at stake, costs of both parties of an appeal to the Judicial Committee of the Privy Council were directed to be paid by the appellant who was successful in the appeal: *Forget v. Ostigny* (1895), A.C. 318. See also *Florence v. Mallinson*, 65 L.T. 354; *American Tobacco Co. v. Guest* (1892), 1 Ch. 630.

An action by an architect to recover \$600 for professional services was, by consent, referred for trial to an official referee, who reported that the plaintiff was entitled to recover \$397. The defendant had, before the action, tendered \$325 and had paid that amount into court with his defence. The defendant appealed from the report, and the plaintiff also appealed after the defendant's appeal had been set down. Both appeals were dismissed with costs. A further appeal by the defendant to the Court of Appeal was also dismissed:—*Held*, upon appeal from taxation of costs, that the plaintiff was entitled to tax a counsel fee upon the trial before the referee, the amount of which would not be reviewed, and also a fee for counsel advising on evidence. *Re Robinson*, 16 Ont. P.R. 423, distinguished; *Held*, also, that the defendant was not entitled to tax as part of his costs of the plaintiff's appeal from the report the amount paid for a copy of the evidence taken before the referee, which was required by the defendant for his own appeal: *Denison v. Woods*, 18 Ont. P.R. 328.

The defendant employed the plaintiffs as his brokers to sell on his account 200 shares of a certain stock at a named price, the plaintiffs understanding that in event of loss the defendant's liability should not exceed \$200. The contract involved the making by the plaintiffs of a contract for the future delivery of the shares at the prices named, and their acquiring the stock when it became necessary by the rules of the exchange to

comp
plainti
dissen
by the
the Co
in a C
reversi
Co
untaxe
subject
Huyck

On
scale
under
shewed
County
scale h
tended
unsettl
beyond
absenc
evidenc
A. J. A
be allo
to set
Queen's
Mutual
Clough

In
defence
evidenc
thereun
not use
defenda
witness
that the
with co
executi
been, un
that it
dants of
appeal
of a co
Canada

complete the transaction. In an action upon this contract the plaintiffs recovered \$200 and interest:—*Held* (Falconbridge, J., dissenting), that the amount of \$200 recovered was ascertained by the act of the parties within the meaning of sec. 23 (2) of the County Courts Act, R.S.O. ch. 55, and therefore recoverable in a County Court: *Thompson v. Pearson*, 18 Ont. P.R. 420, reversing 18 Ont. P.R. 308.

Costs of an arbitration incurred by a party thereto, if untaxed, do not form a liquidated amount, and cannot be the subject of a special indorsement upon a writ of summons: *Huyck v. Wilson*, 18 Ont. P.R. 44.

On an application for a direction to the Master as to the scale on which the costs of an action in the Queen's Bench under the former practice should be taxed, so far as the record shewed the action appeared to be within the jurisdiction of the County Court, and no certificate for costs on the Queen's Bench scale had been granted by the trial judge, but the plaintiff contended that the action was really one for the balance of an unsettled account, exceeding in the whole \$400, and, therefore, beyond the jurisdiction of a County Court:—*Held*, that, in the absence of such a certificate, the record alone and not the evidence should be looked at, and that, under sec. 62 of the A. J. Act, R.S.M., ch. 1, only County Court costs should be allowed to the plaintiff, and the defendant was entitled to set off the difference in his costs of defence, between Queen's Bench and County Court scales. *Miller v. Beaver Mutual Fire Insurance Co.*, 15 U.C.C.P. 75, followed: *Allan v. Clougher*, 12 Man. R. 325.

In an action for libel the defendants in support of their defence of justification obtained a commission and had the evidence of certain witnesses out of the jurisdiction taken thereunder for use at the trial. The evidence, however, was not used, owing to the plaintiff being called as a witness by the defendants and admitting substantially what was stated by the witnesses in their depositions before the commissioner:—*Held*, that the defendants, having obtained judgment in their favour with costs, were entitled to tax against the plaintiff the costs of executing the commission, the taking of the evidence having been, under the circumstances, not unreasonable, and the fact that it was not used not being sufficient to deprive the defendants of the costs of it. The practice is not to interfere upon appeal with the discretion of a taxing officer as to the *quantum* of a counsel fee: *Rondot v. Monetary Times Printing Co., of Canada*, 18 Ont. P.R. 141.

Under *O. 63, R. 13*, before taxing costs the party taxing is required to give one day's notice to the opposite party.

Under *O. 63, R. 13*, before taxing costs accruing in Halifax "one day's notice . . . shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, etc."—*Held*, that the words "one day" are not to be read as meaning "one clear day"; and, *Seemle*, that notice given at any time up to seven o'clock of the evening of the day before the day for which the notice is given would be sufficient: *Barrowman v. Fader*, 31 N.S.R. 29.

Held, that on an appeal from a Court of Revision to a Board of three County Judges, the only costs that can be ordered to be paid to a successful appellant are witness fees, on the Division Court scale, and the *per diem* allowance to the two outside judges: *In re Toronto Electric Light Co. and Canadian Pacific R. W. Co.*, 34 C.L.J. 791.

Costs taxed before the taxing officer were retaxed before a judge of the court, after notice in writing pursuant to the provisions of *O. 63, R. 23* (Acts of 1893, appendix):—*Held*, that the right of appeal was retained by the Act creating the office of Taxing Master, Acts of 1885, ch. 36:—*Held*, that the court would not interfere with the retaxation unless some very gross error had been committed, violating well-settled principles of taxations of costs:—*Held*, that, on retaxation, a judge, under the provisions of the rule, has the fullest discretions as to items, and having acted within his powers, and it not being shown that the retaxation proceeded upon any wrong principle, that the appeal must be dismissed with costs. It was brought to the notice of the court that the taxing officer limited the costs of retaxation to his own fees, and refused the costs of the application before the judge:—*Held*, that he erred in doing so, the party succeeding being entitled to all necessary costs incurred in obtaining the results arrived at: *Palgrave Gold Mining Company v. McMillan*, 31 N.S.R. 198.

An appeal from the taxing officer's taxation of costs in the Court of Appeal is to a judge of the High Court not to the Court of Appeal: *Petrie v. Guelph Lumber Co.*, 10 Ont. P. R. 600, applied and followed. Where plaintiff recovered judgment in the High Court for a sum within the jurisdiction of the County Court, and was allowed costs on the County Court scale only, with the usual set-off to the defendant, and the defendant's appeal from the judgment to the Court of Appeal was dismissed with costs:—*Held*, that the Court of Appeal having ordered the

defe
limi
of f
mus
Coo

mer
the
defe
gav
Cou
an
\$20
of t

Cou
bou
ants
the
Cou
mor
soli
Sup
Roi

Div
\$25
has
his
defe
sect
O.R

par
do
his
on
was
exp
Coo
hav
of
defe

defendant to pay the costs of the appeal generally, without any limitations as to scale or amount, and there being only one tariff of fees payable upon appeals from the High Court, that tariff must govern the allowance of costs under the judgment of the Court of Appeal: *Holmes v. Braeddy*, 18 Ont. P. R. 79.

The plaintiff at a trial in the High Court obtained a judgment for damages and costs. On appeal by the defendants to the Court of Appeal the appeal was dismissed with costs. The defendant then appealed to the Supreme Court of Canada and gave the security required by sec. 46 of Supreme and Exchequer Courts Act but no other security. The plaintiff thereupon made an application for payment out of court to them of the sum of \$200 paid into court by the defendants, as security for the costs of their appeal to the Court of Appeal.

It was held that proceedings to enforce the plaintiff's High Court judgment was not stayed and that the court was not bound to pay out to the plaintiff the sum paid in by the defendants; the judgment of the Court of Appeal being stayed pending the result of the appeal to the Supreme Court as the Supreme Court might reverse the judgment, and for that reason the money should not be paid to the plaintiff, unless the plaintiff's solicitor would undertake to repay the money in the event of the Supreme Court reversing the judgment of the Court of Appeal: *Rombough v. Balch*, 19 P.R. 123.

No security for costs is required on a motion or appeal to the Divisional Court. This is under the provisions of *Ontario Rule 825*. See also 58 V.C. 12, sec. 77. Where the plaintiff however has acquired a foreign domicile, after a judgment of dismissing his action without costs, appeals to the Divisional Court the defendant is entitled to security and can obtain an order for security: *Tanner v. Weiland*, 19 P.R. 149; *Arnold v. Tuyl*, 30 O.R. 663, distinguished.

In an ejectment action where the plaintiff claims several parcels of land, and established his title to some and failed to do so to others, the judge at the trial ordered each party to pay his own costs. This order was set aside by the Court of Appeal on the ground that directing each party to pay his own costs was not an exercise of discretion in its legal sense. The court expressed its approval of the judgment of Sir George Jessel in *Cooper v. Whittingham*, Ch. D. 15, 501. The judge should have given judgment for the plaintiff with costs for the portion of land as to which he was successful, and judgment for the defendant for the balance with costs. This judgment would

entitle the plaintiff to the costs of the cause, including the costs of proving his title to the land as to which he succeeded, and the defendant only to the costs occasioned by the plaintiff having claimed more than he was able to prove his title to: *Jones v. Curling*, 13 Q.B.D. (C.A.) 262.

Under the power given by Ontario Rule 826, security for costs of an appeal to the Court of Appeal was dispensed with where it appeared that the appellant was an infant suing by a next friend, and unable on account of poverty to procure security. It was also shown, that her action was dismissed at the trial, the judge following a reported decision of the Divisional Court, with which decision the appellant would be met if she appealed to that court—which court, of course, she could appeal to without giving security. Moss, J.A., in giving judgment, stated, after referring to the fact that unless the Rule was relaxed the plaintiff would be deprived of an appeal: "In view of this, and considering that the plaintiff is an infant—one of a class usually considered privileged as suitors—I think she ought to be relieved of her present difficulty to the extent of placing her in the same position, with respect to security, as if she were appealing to a Divisional Court. In doing this I do not consider I am running counter to any previous decision." The costs of the application were made costs in the appeal: See *Sherlock v. Powell*, 18 P.R. 312; *Roberts v. Coughlin*, 18 P.R. 94; *Thuresson v. Thuresson*, 18 P.R. 414; and *Fahey v. Jephcott*, O.L.R. 1901, Vol. 1, 198.

Where the respondent's solicitor refused, except upon terms more stringent than the court would impose, to extend the time for delivery by the appellant, of the appellant's reasons for appeal and the draft appeal case, and the appellant refused to accept the respondent's terms, but moved before a judge of the Court of Appeal and obtained an order extending the time, the costs of the motion made necessary by respondent's refusal to extend the time were made costs to the appellant on the appeal: *McGuire v. Corby*, O.L.R. 1901, Vol. 1, 590.

Where an application for an extension of time for filing and serving notice of appeal and serving the appeal case (*Ontario Rules 799 and 801*) was made to the respondent's solicitor, and was, in the opinion of the judge who heard a motion to extend the time provided by the Rules, unreasonably refused, an order was made extending the time, and the execution was stayed; without costs to the respondent: *Bodine v. Howe*, O.L.R. 1901, Vol. 1, 208.

the
sec.
P.R.

the
cour
orde

refe
allo
See
L.T.

som
disa
Ban
to a
obje
com
disti
Trin
Gr.

(
cour
and
156.
such
v. *H*
Re £
P.R.

U
Earn
unde
besid
to th
actio

A
respe
princ
rever
S.C.E
S.C.F

The taxation of a mortgagee's costs of proceedings under the power of sale in a mortgage, under R.S.O. 1897, ch. 121, sec. 30, is not subject to appeal: *Re Vanluven and Walker*, 19 P.R. 216.

Where the Appellate Court refused to make an order for the payment of an executor out of the estate in litigation, the court of the first instance has no power to make any such order: *Purcell v. Bergin*, 16 P.R. 301.

The judges follow the rules of the Court of Chancery in reference to the costs of appeals from a Master's report, and allow the costs to follow the event: *Downey v. Roaf*, 6 P.R. 89. See also *Chapman v. Newell*, 14 P.R. 208; *Ross v. White*, 71 L.T. 277.

The word "Event" is to be understood distributively, where some of the grounds of appeal are allowed with costs and others disallowed with costs according to the principle laid down in *Bank of Hamilton v. Ryan*, 13 Gr. 204, the appellant is entitled to all costs of the appeal which are exclusively applicable to the objections allowed and to a proportionate share of those costs common to all the objections, according to the number of really distinct grounds of appeal on which he succeeds. See also *Trinity College v. Hill*, 8 O.R. 286; *Ferguson v. Frontenac*, 21 Gr. 188.

On an appeal to the Court of Appeal of Ontario, where the court is equally divided, the judgment appealed from is affirmed, and as a general rule with costs: *Long v. Hancock*, 12 O.A.R. 156. In the Supreme Court of Canada however the practice in such a case is to give no costs to either party. See also *Whiting v. Hovey*, 12 Ont. A. R. 119; *Poulin v. Quebec*, 9 S.C.R. 185; *Re Stanstead Election*, 20 S.C.R. 12; *Mills v. Hamilton*, 17 P.R. 74.

Under sec. 41, and sec. 42 of the Mechanics' and Wage Earners' Lien Act, R.S.O. 1897, ch. 153, the costs of an action under the Act, are limited to twenty-five per cent. of the judgment, besides actual cash disbursements. This provision does not apply to the costs of an appeal from the decision of a judge trying the action: *Gearing v. Robinson*, 19 P.R. 192.

An appeal, will not lie to the Supreme Court of Canada, in respect to costs alone, unless the appeal involves a matter of principle, in which the party appealing has an interest in having reversed, and which affects the costs: *Archibald v. DeLisle*, 25 S.C.R. 1; *Baker v. DeLisle*, 25 S.C.R. 1; *Mowatt v. DeLisle*, 25 S.C.R. 1.

Even though there may be jurisdiction to entertain an appeal in order to avoid expense, the Supreme Court of Canada, will when possible quash an appeal involving a question of costs only: *Schlomann v. Dowker*, 30 Can. S. C. R. 323.

At the trial the defendant obtained an order for the inspection of a vein in the plaintiff's claim upon the statement made that the vein was a continuation of a vein, the apex of which was within the limits of their own claim. The plaintiffs asked for an adjournment with a view of inspecting their own property and if possible rebutting the defendant's claim and an adjournment was allowed, but on terms viz: that all costs occasioned thereby should be borne by the plaintiffs in any event. On appeal from this ruling it was held, that such costs should abide the result of the issue to which the inspection related: *Iron Mask v. Centre Star*, 7 B.C.R. 66.

No costs allowed where parties fail in substantial points, on appeal. See *Re Estate of McRae*, 26 N.S.R. 214, also *Hart v. The Boston Marine Insurance Co.*, 26 N.S.R. 427.

The plaintiffs claimed a farm, a portion of the estate of their father under an executory devise over to them in his will, after the life estate of their brother. The defendants were the executors of the will of the brother's grantee, and were in possession of the farm, asserting that their grantor's estate was in fee. The plaintiffs claimed, in the alternative, as two of the heirs at law of their brother, upon the ground that the conveyance to the defendants' testator was void, for mental incapacity and fraud. The plaintiffs succeeded upon their first contention, and were awarded possession of the farm subject to payment for the defendants' improvements, less the rents received by them:—*Held*, that, as the whole estate of the original testator was not before the court, nor the executors, nor all the persons representing that estate, it was impossible to give costs out of it in the ordinary sense, and an appeal lay from the judgment of the High Court ordering the costs to be paid out of the farm in question, which was wrong in principle. The costs should be disposed of in the manner mentioned in the judgment, as in an ordinary action for the recovery of land, in which the plaintiffs had succeeded subject to a claim for and a balance found due to the defendants for the improvements under mistake of title: *Crawford v. Broddy*, 18 Ont. P. R. 233.

Where the judgment of the High Court was against a defendant and he is appealing to the Court of Appeal; he is not entitled to an order requiring the plaintiff to give security for costs.

Where the defendants would have been entitled to such an order at the commencement of the action, but did not take it because it should be set aside owing to the plaintiff, though resident out of the jurisdiction, owning property within it, an application after judgment, upon the ground that the plaintiff had ceased to own property within the jurisdiction, was refused by a judge of the Court of Appeal: *Exchange Bank v. Barnes*, 11 Ont. P. R. 11, followed; *Small v. Henderson*, 18 Ont. P. R. 314.

That an appeal, as to costs, may sometimes be entertained, although there be no other question raised on the appeal; as where the giving or withholding of costs is not wholly discretionary, as in the case of a trustee guilty of no misconduct: *Taylor v. Doulen*, L.R. Ch. 697; *Re Hoskins*, 6 Ch. D. 281; *Farrow v. Austin*, 18 Ch. D. 58; *Re Knight's Will*, 26 Ch. D. 82; or where the appellant raises some other ground of appeal, not merely colourable, although he does not succeed in it: *Atty.-Gen. v. Butcher*, 4 Russ. 180; *Fitzgibbon v. Scanlan*, 1 Dow 261; *Scarry v. Wilson*, 13 Man. R. 216.

A settlement of an alimony action after judgment for permanent alimony, upon which writs of execution were in the sheriff's hands, was effected between the parties without the intervention of the solicitors on the record. To carry out the settlement a third solicitor was instructed to withdraw the writs from the sheriff's hands, which he did without paying the costs of the plaintiff's solicitor, which he knew were unpaid. There was no collusion or actual fraud against the plaintiff's solicitor proved. Held, per Ferguson, J., that the plaintiff's solicitor had control of the writs in the sheriff's hands to the extent of his unpaid and taxable costs, and that he was entitled to have the writs replaced, or new writs placed in the sheriff's hands, at the expense of the solicitor who withdrew them and the plaintiff, or to an order directly against the defendant for payment of his unpaid taxable costs, and for the costs of the motion against the plaintiff and the solicitor who withdrew the writs; but that he was not entitled to an order for payment of his unpaid costs by the solicitor of the sheriff. This judgment was affirmed by the Chancery Division, with this variation that the solicitor who withdrew the writs was relieved from the payment of costs: *Friedrich v. Friedrich*, 10 P.R. 308, 546.

County Courts Act.

R.S. Man., ch. 33, secs. 308, 310—Reducing amount of verdict—Appeal.

A County Court judge has jurisdiction under sec. 308 of the R.S.M., ch. 33, to reduce the amount of the verdict.

The respondent in a County Court appeal cannot, without entering a cross-appeal, have any relief against the verdict appealed from: *Cline v. Cross*, 12 Man. R. 442.

It was never intended that the Supreme Court of Canada should interfere in matters respecting the admission of attorneys and barristers in the several provinces: *In re Cahan*, 21 S.C.R. 100.

A plaintiff who has obtained judgment in his favour, which has been affirmed on appeal to the full court, is entitled to have paid out to him the money he had paid into court as security for costs, notwithstanding an appeal by defendant to the Supreme Court of Canada: *Hamill v. Lilley*, 56 L.T.N.S. 620, and *Marsh v. Webb*, 15 Ont. Pr. 64, followed; *The Agricultural Ins. Co. v. Sargent*, 16 Ont. Pr. 397, distinguished; *Day v. Rutledge*, 12 Man. R. 309.

Omitting to give notice of a preliminary objection to an appeal is not sufficient ground for depriving a respondent, who succeeds in dismissing the appeal thereon, of his costs: *Tollemache v. Hobson*, 5 B.C.R. 223.

A foreign corporation, appealing to the full court from a judgment against it at the trial, cannot be ordered to give security for payment of the costs of the action found against it, by the judgment appealed from, as well as security for the costs of the appeal: *Nelson and Fort Sheppard Railway Co. v. Jerry*, 5 B.C.R. 166.

The costs of an application to the Master in Chambers under *Ontario Rule 1219*, to change the place of trial in a County Court action, should be taxed on the County Court scale, but the costs of an appeal, in the same matter from the Master's order to a judge in Chambers and of a further appeal to a Divisional Court, should be taxed on the High Court scale: *Re Hicks v. Mills*, 18 Ont. P.R. 123.

The Exchequer Courts Act, 50 and 51 Vict., ch. 16, secs. 51-43 (D.); 54 and 55 Vict., ch. 26, sec. 8 (D.). On a motion to quash an appeal where the respondents filed affidavits stating that the amount in controversy was less than the amount

fix
Ap
sho
jur
mi
jur
un
mo
Co.

pra
the
me

exc
Sec
not
last
affi
On
in
cas
wit
of
app
in
pla

jud
and
unc
app
dan
Con

con
the
app
33,
on
ver
resq
the

fixed by the statute, as necessary to give jurisdiction by the Appellate Court, and affidavits were also filed by the appellants showing that the amount in controversy was sufficient to give jurisdiction under the statute, the motion to quash was dismissed, but the appellants were ordered to pay the costs, as the jurisdiction of the court to hear the appeal did not appear until the filing of the appellants' affidavits in answer to the motion: *Dreschel v. Auer Incandescent Light Manufacturing Co.*, 28 S.C.S. 268.

Sec. 26, ch. 9, Acts of 1889, enacts that "the pleadings, practice, process, forms and procedure of the Supreme Court for the time being, as embodied in the Judicature Act and amendments thereof, and the orders and rules therein now in force . . . shall apply to and extend to the County Court . . . except as the case may be modified and limited by this Act." Sec. 54 provides "that . . . if any cause when called is not tried either party shall be at liberty to move the court, on last day of said term, . . . that the judgment below be affirmed or reversed, as the case may be, with costs . . ." On appeal from the decision of the Stipendiary Magistrate in favour of defendant, defendant was not present when the case was called for trial in the County Court and plaintiff called witnesses and took judgment *ex parte*:—*Held*, that the practice of the Supreme Court, which otherwise would have been applicable, was modified in this case by the provision contained in sec. 54, and that, under that section, it was the duty of the plaintiff to have moved on the last day of the term.

The County Court Judge, having refused to set aside the judgment for plaintiff:—*Held*, that he was wrong in doing so and that the judgment must be set aside, but, as the plaintiff undertook to try the cause on the merits, that no costs of the appeal should be allowed except the cost of printing; defendant's costs on the summons to be costs in the cause: *Fillis v. Conrod*, 34 C.L.J. 173 (Nova Scotia).

The plaintiff recovered judgment in the County Court for commission on the sale of a parcel of land for the defendant at the full amount of percentage usually allowed. Defendants applied, under sec. 309 of the County Courts Act, R.S.M. ch. 33, for a new trial, or to reverse or vary the judgment, relying on the fact that another real estate agent had recovered a verdict against him for one-half the usual commission in respect of the same sale, and appealed to the Full Court from the County Court Judge's order dismissing that application:—

Held, that on such an appeal the court cannot review the original decision on the facts in the same manner as it would do on an appeal direct from the original verdict and can only consider whether the decision of the County Court Judge on the application was made erroneous or not. On such an application it is not the duty of the judge to try the case anew, and he should not disturb the verdict he has rendered, unless on reconsideration it appears that there has not been evidence on which a jury could have found as he did, or that his verdict has been arrived at through an oversight, or misconception of the law or the evidence. On considering the evidence and applying these principles the appeal should be dismissed. The fact of the recovery by another plaintiff of commission in respect of the same sale was *res inter alios acta*, and was not in itself material: *Smith v. Smyth*, 9 Man. R. 533.

Where a question was brought before the court for the first time no costs were allowed: *In re Ross*, 27 N.S.R. 297.

It is only when some gross error, or some fundamental principle of justice has been ignored by the Provincial Court that the Supreme Court of Canada will interfere with the discretion exercised by the Provincial Court in awarding or withholding costs. *Consolidated Electric Co. v. Pratt*, 28 S.C.R. 603.

Gibson v. Cook, 5 B.C.R. 434, it was held that under Rule 751, the discretion as to costs, in a jury action is exercisable by the court or judge in the first instance only, and that the full court has no power to make any order thereon, except an appeal upon questions, whether or not good cause has been shown for depriving a successful party of his costs.

If an appellant who has served a notice of appeal does not give security as hereinafter provided, in case security is not dispensed with, or does not set the appeal down, he shall be deemed to have abandoned the same, and the respondent shall be entitled to the costs of the appeal. *Ontario Rule 821*. See *D'Ivry v. The World*, 17 P.R. 543.

No appeal under *Ontario Rule 774* shall lie, unless a notice thereof is given within four days from the day of the date of the certificate, and the appeal brought on for argument within ten days from the said day. See *Stark v. Fisher*, 11 P.R. 235; *Quay v. Quay*, 11 P.R. 258; *Clark v. Virge*, 17 P.R. 260. SEE TAXATION.

The appeal shall be heard by the judge upon the evidence which was brought in before the taxing officer, unless otherwise ordered. *Ontario Rule 776*.

pro
the
are
cos
jud
all
the
the
a s
the
in
mo
the
suc
by
Sec
10
P.I

cou
be

sho
cou
fel
22
12
P.I

for

Ba
if
the
alt

app
exc

The costs of application to extend the time for taking any proceeding shall be in the discretion of the taxing officer, unless the court or judge shall have specially directed how the costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless by order of a judge. The costs of a summons to extend time shall not be allowed in cases to which Rule 8 of Order LXIV applies, unless the party taking out such summons has previously applied to the opposite party to consent, and he has not given consent to a sufficient extension of time, or the taxing officer shall consider there was a good reason for not making such application, and in case the taxing officer shall not allow the costs of such summons, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment or deal with such costs in the manner provided by regulation. *British Columbia* 778. See *Ontario Rule* 353. See also *Carter v. Stubbs*, 6 Q.B.D. 116; *Wilby v. Standard*, 10 P.R. 34; *Curtis v. Sheffield*, 21 Ch.D. 5; *Re Gabourie*, 12 P.R. 252.

APPORTIONMENT OF COSTS.

In an action, where there is a counter-claim, the claim and counter-claim are to be treated separately, and the costs are to be taxed in accordance with that principle.

Items which are common to both defence and counter-claim should not be taxed to a defendant who has succeeded upon his counter-claim. *Haggart v. Brampton*, 17 P.R. 477; *Summerfeldt v. Johnston*, 17 P.R. 6, distinguished; *Griffiths v. Patterson*, 22 L.R. Ir. 656, not followed. See also *Emerson v. Gearon*, 12 P.R. 399; *Ontario Forge & Bolt Co. v. Comet Cycle Co.*, 17 P.R. 156; *Heritage v. Ford*, 71 L.T. Jour. 313.

APPEAL BOOKS.

Where appeal books are printed, ten cents a folio is allowed for revising the proof.

As to the reasonableness of this charge, *Burton, J.A.*, said in *Barber v. Morton*, 2 C.L.T. 340: "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."

The appellant, if costs are awarded to him, shall, when the appeal book has not been printed, be entitled to a sum not exceeding 30 cents per folio for one copy of the appeal book,

and for making of all copies of necessary matter, other than evidence included in the appeal book delivered. *Ontario Rule 808.* See *Manitoba Rule 671, 672.*

Under the provisions of Rule 802, if the appellant desires the appeal book printed, he shall give notice to the respondent to that effect, and where there is a difference between the appellant and respondent as to the question of printing, the appeal book shall not be printed unless upon application the Court of Appeal or judge thereof orders the books to be printed.

Where the respondent desires to have the appeal case printed, he may have it done at his own expense; the appellant, however, may be put upon terms, in the event of any further appeal by him, where printed appeal book will be necessary. See *Teetzel v. Dominion Construction Co.*, 18 P.R. 16. See also *Ontario Rules 801 to 810 inclusive.*

9. The party appealing from a judgment or order shall leave with the Registrar a copy of the notice of appeal to be filed, together with a *præcipe* for hearing the appeal, two days before the day for hearing, and such officer shall thereupon set down the appeal to be heard, and the party appealing shall at the time of the filing of the *præcipe* deliver to the Registrar ten copies of the Appeal Book, if printed; if written, five copies. See *British Columbia Rule 678.*

Nova Scotia rules in reference to appeal books are as follows:—

1. All evidence and documents to be used at the argument shall be printed in demi-quarto form, on paper of good quality, and on the left hand pages of the book only, and all the right hand pages shall be left blank. The type shall be small pica, leaded, and the size of each page shall be eleven inches by eight and one-half inches, and every tenth line shall be numbered in the margin throughout. There shall be an index in the beginning of the book, arranged in the same order in which the contents of the book are printed, and the correspondence and other exhibits shall be printed in the order of their respective dates. The index shall refer to:

- (a) Each pleading, rule or order, and give its date;
- (b) The evidence of each witness, and give the name of each;
- (c) Each exhibit, or other document, and give its description, date and mark of identification.

case:
by t
carri
mad
part:

3

prep
and
tween
time
to as
judge
Abst
the c
text
been

4

be fu
and c
the la
being
the p
exhib

6.

the p
and r
party.

7.

any u
the co
cause
otherv

8.

papers
of tria
is to b
9th N

2. In appeals the case shall be printed by the appellant; in cases stated, by the plaintiff; and in all other matter and causes, by the party who has given the notice of motion or has the carriage of the proceedings. Affidavits to be used upon motions made to the Supreme Court *en banc* shall be printed by the party who desires to use them.

3. The party whose duty it is to have the case printed shall prepare the matter which in his opinion should form the case, and shall give to the opposite party, his solicitor, or agent, twenty-four hours' notice that the same may be inspected at a time and place named in the notice. If no agreement is come to as to what should be printed, the case shall be settled by a judge after twenty-four hours' notice of the application. Abstracts may be used by consent or by order of a judge, but the court may refer, or allow either party to refer, to the full text of the matters or documents of which such abstracts have been made, or may order any further printing to be done.

4. The party whose duty it is to have the case printed shall be furnished by the opposite party with copies of all exhibits and other documents in the possession or under the control of the latter, which are to be printed; and in default of the same being so furnished within forty-eight hours after demand made, the party in default shall, at his own expense, cause such exhibits or documents to be printed for the argument.

6. Eight printed copies of the case shall be deposited with the prothonotary for the use of the judges, officers of the court, and reporter, and three copies shall be delivered to the opposite party, his solicitor or agent, as soon as the case is printed.

7. The court or a judge may dispense with the printing of any matter on reasonable cause being shown by affidavit, and the court may postpone any argument from time to time, on cause shown, to enable the printing to be completed or otherwise.

8. In this rule the expression "case" includes the appeal papers, orders, minutes of evidence, case stated, affidavits, report of trial, exhibits, and all other matters on which any argument is to be proceeded with. (R.S., ch. 104, Or. 58, rule 7; S.C.R., 9th Nov., 1893.)

ARBITRATIONS.

In Ontario the Arbitration Act R.S.O. ch. 62, deals with this subject.

In secs. 19 and 20 inclusive of this Act, "Arbitrator" shall include umpire and referee in the nature of an arbitrator; and "Award" shall include umpirage and certificate in the nature of an award. 60 Vict., ch. 16, sec. 18.

No arbitrator, who is not by profession and calling a barrister, solicitor, engineer, architect, or Ontario land surveyor, shall be entitled to demand or take for his attendance and services, as an arbitrator, any greater fees than are hereinafter set down in sched. B to this Act, except as provided in sec. 21. 60 Vict. ch. 16, sec. 19.

No arbitrator, who is by profession and calling a barrister, solicitor, engineer, architect, or Ontario land surveyor, shall be entitled to demand or take for his attendance and services as such arbitrator any greater fees than are hereinafter set down in sched. C to this Act, except as provided in sec. 21. 60 Vict. ch. 16, sec. 20.

The parties to the submission may agree by writing signed by them or by making such agreement a part of the submission, to pay to the arbitrator or arbitrators, if more than one, such fees or sums for each day's attendance or such gross sums for their taking upon themselves the burden of the reference and making the award as the said parties see fit, and in every such case the fees and sums so agreed upon shall be substituted for those set down and authorized in the schedules to this Act, and shall be taxed and allowed by the taxing officer accordingly. 60 Vict., ch. 16, sec. 25.

No greater fees shall be taxed or allowed to any person called as a witness before an arbitrator than would be taxed and allowed to the same person in an ordinary action before a court having jurisdiction over the subject of the reference. 60 Vict., ch. 16, sec. 21.

Where, at a meeting of arbitrators, of which due notice has been given, no proceedings are taken in consequence of the absence of any party, or because a postponement is made by the arbitrators at the request of any party to some future day, the arbitrators shall make up an account of the costs of the meeting, including the proper charges for their own attendance and that of any witnesses and of the counsel or solicitor of the party present, and not desiring the postponement, and (unless, under

the
be u
the
requ
shall
be tl
awai
such
othe
amot
costs
along
at T
taxir
settli
the s
ment
affida
sec. 2
(1
in se
to th
affida
sched
to th
in dis
he sh
any n
(2
for th
(3
mann
action
In
ville,
Munic
that A
other
should
The d
Rule 1

the special circumstances of the case, they think that it would be unjust so to do), they shall charge the amount thereof, or of the disbursements, against the party in default or at whose request the postponement is made, and the last named party shall be bound to pay the same to the other party, whatever may be the event of the reference, and the arbitrators shall, in the award, make any direction necessary for that purpose, and if such sum is payable by the party in whose favour the award is otherwise made, it may be set off against, and deducted from any amount awarded in favour of that party. 60 Vict., ch. 16, sec. 22.

Any party to an arbitration shall be entitled to have the costs thereof, including the fees of the arbitrators, or such fees alone, taxed by one of the taxing officers of the Supreme Court at Toronto, upon an appointment which may be granted by the taxing officer for that purpose on the filing of an affidavit setting forth the facts. A taxation of the said fees by one of the said taxing officers may likewise be had upon an appointment at the instance of the arbitrators granted upon an affidavit as aforesaid. 60 Vict., ch. 3, sec. 3; ch. 16, sec. 23 and sec. 27 part.

(1) The taxing officer shall in no case, except as provided in sec. 21, tax higher fees than are set down in the schedules to this Act, but, upon reasonable grounds established upon affidavit, he may reduce the maximum mentioned in the schedules, but not below the minimum, having always regard to the length of the arbitration and to the value of the matter in dispute, and the difficulty of the questions to be decided; but he shall not tax more than one counsel fee to either party for any meeting of the arbitrators.

(2) The taxing officer may tax and allow a reasonable sum for the preparation and drawing up of the award.

(3) An appeal may be had from such taxation in the same manner as from the taxing officer's certificate of taxation in an action. 60 Vict., ch. 16, sec. 24.

In re Pattullo and the Corporation of the Town of Orangeville, 31 O.R. 192, it was held that the power given by the Municipal Act, R.S.O. ch. 223, sec. 466, to arbitrators under that Act to award the payment by any of the parties to the other of the costs of the arbitration, or any portion thereof, should receive the same construction as Consolidated Rule 1130. The discretion given to the judge or court under Consolidated Rule 1130 is a judicial one and subject to the rule that when

the claimant has not been guilty of any misconduct, omission or neglect, such as to induce the court to deprive him of his costs, costs should be awarded him, and the unsuccessful party should bear the whole costs of the litigation.

The arbitrators upon an arbitration under sec. 385, *et seq.*, of the Municipal Act, 1892, awarded and directed that costs should be paid by the land owners, but on their award did not fix the amount or give any directions as to what scale the costs were to be taxed on, as provided by sec. 399. It was held in this case that the taxing officer had no authority to tax either on the High Court or the County Court scale, but that an application should be made to have the award referred back to the arbitrators for completion: *Preston v. Klotz*, 16 P.R. 318.

The taxing officer, on the taxation of the costs of an arbitration, has a discretion and can allow a second counsel fee, notwithstanding the provisions of R.S.O. (1887) ch. 53, sec. 25. This section states that only one counsel fee shall be taxed, but as it is inconsistent with item 163 of the Tariff of Costs appended to the Rules, and accordingly must be taken to be repealed by virtue of 51 Vict., ch. 2, sec. 4. *Re Pollock and City of Toronto*, 15 P.R. 355; *McKeen v. Township of South Gower*, 12 P.R. 553, followed. *Howard v. Harrington*, 20 A.R. 175; *Arscott v. Lilley*, 14 Ont. A.R. 283, distinguished.

In *Re Town of Thornbury and County of Grey*, 15 P.R. 192, it was held the proper construction to be placed on R.S.O. (1887) ch. 53, did not allow arbitrators to charge more than the maximum amount fixed by the schedule for a single day's sitting, even though the day's sitting extended beyond six hours. *Armstrong v. Darling*, 6 C.L.T. 214, over-ruled.

In an arbitration proceeding under British Columbia Acts (1873) No. 20, and (1892) ch. 64, sec. 3 (*i*), a Judge in Chambers has no jurisdiction to order the costs of the successful party to be deducted from the amount awarded by the arbitrators: *Re Dwyer and The Victoria Waterworks Arbitration*, 6 B.C.R. 165.

In *Re Montague and the Township of Aldborough*, 12 P.R. 141, where the costs of the arbitration were ordered to be taxed on the County Court scale, a counsel fee of \$25.00 only was allowed, although the arbitration lasted several days.

for
not

to c
fifty

allo
cost
soli

ing
aga

wh
deli
succ
dan

it w
writ
inst
Reg
an
to h

in a
atte
the

adm
473,
that
the
does
min

ATTENDANCES.

Where an action is dismissed with costs there is no necessity for attending to settle the judgment and such an attendance is not taxable.

"Attending to bespeak and for order." This does not apply to orders granted on *præcipe*; only one common attendance of fifty cents will be allowed on such orders.

A taxing officer, master or single judge has no power to allow more than one dollar an hour on taxation of a bill of costs, as this is the fee fixed by the tariff. This applies to solicitor and client taxations as well.

In *Carlisle v. Roblin*, 16 P.R. 328, it was held that attending to search for an affidavit on production is not taxable as against the opposite party.

In *Alexander v. School Trustees of Gloucester*, 11 P.R. 157, where the judge fixed a day to deliver judgment but did not deliver judgment till the subsequent day, it was held that the successful party was entitled to a fee of \$2.00 on each attendance. See, however, *Ham v. Lasher*, 24 U.C.Q.B. 357.

The following attendances should be disallowed:—

Attending to admit service of affidavits.

Attending on return of motion is included in counsel fee.

In *Joyce v. Canada Publishing Co.*, reported in 3 C.L.T. 267, it was held that where judgment was reversed at the trial and written judgment of the court was sent to the Registrar's office instead of being delivered in court, and counsels attended at Registrar's office, to read the judgment, that such attendance was an attendance to hear judgment and that the fee for attending to hear judgment, namely, \$2, should be allowed.

The allowance for drawing and instructions for an affidavit in answer to interrogatories and other special affidavits and attending the deponent to be sworn, include all attendance on the deponent to settle and read over: *British Columbia Rule 768*.

As to unnecessary attendances of solicitors in Chambers in administration action, Jessell, M.R., in *Sharp v. Lush*, 10 Ch. D. 473, laid down the law as follows: "The law stands in this way, that any person 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 costs 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."

ASSIGNEE.

The assignee for the benefit of creditors, may be ordered to pay the costs of the action personally, as any other unsuccessful litigant may be: *Macdonald v. Balfour*, 20 A.R. 404.

An assignee for the benefit of creditors, on the instructions of the inspectors, contested the plaintiff's claim, who then brought an action, which was dismissed with costs, but, on appeal to the Divisional Court, this decision was reversed, with costs to be paid the defendant, the assignee. The creditors, after taking counsel's opinion, resolved to appeal to the Court of Appeal, but the appeal to the court was dismissed with costs. The assignee charged against the estate the total sum he had to pay in respect of the costs of these proceedings:—*Held*, that he was entitled so to do. Decision of Robertson, J., affirmed: *Smith v. Beal*, 25 O.R. 368.

Where a judge of a County Court, acting under R.S.O. ch. 147, sec. 8, orders the removal of an assignee, he exercises a statutory jurisdiction as *persona designata*, and has no power to order payment of costs.

The proceedings in such a case are not in any court; Rule 1170 (a) does not apply to them.

Re Pacquette, 11 P.R. 463, followed.

History and construction of Rule 1170 (a); *Re Young*, 14 P.R. 303.

See now 56 Vict., ch. 13 (O.)

The parties who initiate and intervene upon the taxation of a solicitor's bill of costs become personally liable to pay the costs of taxation.

And where solicitors rendered to the assignee of an insolvent their bill for services to the insolvent, and the assignee taxed the bill and had it reduced by more than one-sixth:—

sol
set-
ests
anc

1, p
or i
ord
this
"F
any
exp

ing

was
or i

ma
adj
of
aga

Col
inte
to 1

sho
Chi
tak
34

tru
est
life
sub
lim
add
tha
estu
que

Held, that he had a right personally to recover from the solicitor the costs of the taxation, and that there should be no set-off against the amount coming to the solicitors from the estate of the insolvent, as a dividend upon the bill: *Re Rogers and Farewell*, 14 P.R. 38.

The Nova Scotia Collections Act (Acts of 1894), ch. 4, sec. 1, provides that "no person shall be arrested or imprisoned upon or in respect of any judgment of the Supreme Court . . . ordering or adjudging the payment of any money, unless as in this Act hereinafter provided." And sec. 2 of the Act reads: "For the purposes of this Act, the word judgment shall include any order directing payment of money, costs, charges, or expenses."

An order having been made by a judge at Chambers directing defendant to pay over money in his hands to the receiver:

Held, that the order was one which could not be made, and was therefore one which could not be enforced by attachment or imprisonment for disobedience thereto.

Defendant's counsel drew a distinction between an order made as the result of an action between the parties where it is adjudged or ordered that the defendant pay a certain amount of money found or admitted to be in the hands of the party, against whom the order is made, in the course of the litigation:

Held, that the distinction was well founded, and that the Collections Act did not cover such a case as the latter, but was intended to apply only to the case of a judgment debtor ordered to pay money in satisfaction of the judgment against him.

Held, further, that inasmuch as defendant did not appear to show cause against the original order before the judge at Chambers, but stood by until the attachment proceedings were taken, he was not entitled to costs: *Commercial Bank v. Scott*, 34 C.L.T. 170.

Merry v. Powell (1898), 1 Ch. 306, was an action by trustees in bankruptcy to set aside a settlement of his life estate made by the bankrupt, whereby, on his bankruptcy, his life interest was cut down. The trustees of the settlement submitted that the beneficiaries entitled under the impeached limitation should be made parties, and the plaintiff accordingly added them as defendants. At the hearing it was conceded that the settlement, so far as it affected the bankrupt's life estate, was void as against the plaintiff, and the only material question which remained was as to the costs. Kekewich, J.,

held that the trustees having acted properly, and not having put the plaintiff to unnecessary expense, were entitled to deduct their costs from the income of the trust estate in their hands, notwithstanding the settlement as to the same was set aside. As regards the beneficiaries, he was of opinion that, although they were proper parties, they were not necessary parties, and were not entitled to costs as against the plaintiff or out of the trust estate.

There is nothing in the Assignments and Preferences Act, R.S.O. ch. 147, which supersedes the right of a first execution creditor for his costs, or which forbids him realizing them out of the debtor's goods, notwithstanding that an assignment is made. In an action by such an executor creditor, who, after assignment by the judgment debtor, took no active steps to enforce his execution against the assignee and his solicitor, who has received from the estate in settlement of an action a larger sum than the amount of the costs and applied it in payment of the assignee's costs of administering the estate and the solicitor's costs of the litigation:—

Held, that, as there was no fund available for division among the creditors, and as the plaintiff might have proceeded under his execution to realize his costs, but did not do so, he could not recover.

Semble, even if he was entitled to take such a position, and to rank on the estate as a preferred creditor for the costs, he could not treat the whole assets of the estate as subject to a trust in his favour prior to any other charge. He is in no better position than other creditors proving claims, except being entitled to payment in full of the costs of such estate funds as were divisible among creditors, that is, after payment of the costs of collection and assignees' charges: *Gillard v. Milligan*, 34 C.L.J. 27.

Two actions were brought by a trader to restrain proceedings under a chattel mortgage against the trader's stock of goods, and interlocutory injunctions were granted, but the actions were not carried further. The chattel mortgagee brought an action to recover the mortgage money and to restrain the mortgagor from selling the goods, whereupon the latter made an assignment for creditors, and, by arrangement in that action, the goods were sold by the assignee, and payment was made in full to the mortgagee for debts, interest, and costs of that action, after notice and without objection on the part of any of the creditors, or of the solicitor who conducted the actions brought by the trader.

had
bro
a p
assi

und
juri
proj
thei

defe

Ass
fron
witl
inse
only
mer

of
app
pers
cou
Rul

owr
dan
for
The

exe
faci
writ
day
mer
the
She
the
whi

The solicitor claimed, by his exertions in these actions he had saved the goods from being sacrificed by summary sale, and brought this action to have it declared that he was entitled to a preferential lien for costs upon the estate in the hands of the assignee :—

Held, that, even if it were shown that stopping the sale under the mortgage was a benefit to the estate, there was no jurisdiction, without the direction of a statute, to charge the property recovered or preserved, and without a money fund there was no subject for a lien.

Costs as of a successful demurrer only were allowed to the defendant : *Tremear v. Lawrence*, 20 O.R. 137.

Unless an assignee for the benefit for creditors under the Assignments Act has a direct, or implied, promise of indemnity from the creditors, he cannot charge the creditors personally with the costs of an action brought by him on behalf of the insolvent estate. He must look to the assets of the estate not only for his costs, but also for his remuneration and disbursements : *Johnston v. Dulmage*, 30 O.R. 233.

ATTACHING DEBTS.

The costs of an application for an attachment of debts and of any proceeding arising from, or incidental to, such an application, including examination of the debtor or other person liable to examination, shall be in the discretion of the court or a judge. *British Columbia Rule 807. See Manitoba Rule 931 and Ontario Rule 1139.*

A solicitor cannot tax against the defendant items for his own services, letters and disbursements in tracing up defendant's goods and chattels which were fraudulently removed, or for advising the sheriff where an attachment was issued. These charges are all solicitor and client items.

In addition to the costs by law payable to the Sheriff on executing writs of *capias ad respondendum*, *capias ad satisfaciendum*, or *ne exeat regno*, the party at whose instance the writ is issued shall pay to the Sheriff the sum of fifty cents per day for maintenance of the person arrested, by weekly payments of three dollars and fifty cents in advance; and in case the person arrested shall be discharged during any week, the Sheriff shall repay to the person paying the maintenance money the sum of fifty cents a day for each day less than a week for which maintenance money has been paid. The maintenance

money so paid by the plaintiff shall be recoverable by him from the defendant as costs of execution in the action, of which they shall be deemed to form part. *British Columbia Rule 976.*

A Judge in Chambers may, upon the *ex parte* application of any plaintiff or judgment creditor, or the person entitled to enforce a judgment or order, for the payment of money, either before or after the oral examination mentioned in the preceding Rules, and upon affidavit by himself or his solicitor, or some other person or persons aware of the facts respectively, stating, in case a judgment has been recovered or an order made, and that it is still unsatisfied and to what amount, or, in case a judgment has not been recovered or made, that an action is pending, the time of its commencement, the nature of the cause of action, and the actual amount of the debt, claim or demand, and that the same is justly due and owing to the plaintiff by the defendant after making all just discounts; and stating in in either of the said cases that any other person or corporation is indebted to the judgment debtor and is within the jurisdiction of the court, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor, and all claims and demands of the judgment debtor against the garnishee arising out of trust or contract, where such claims and demands could be made available under equitable execution, shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Judge in Chambers or an officer of the court, as the judge shall appoint, to show cause why he should not pay the judgment creditor, or the person entitled to enforce the judgment, the debt, claim or demand, due from the garnishee to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt. See *Manitoba Rule 741.* See *Ontario Rule 911.*

The court or a judge may, upon the *ex parte* application of any person who has obtained a judgment or order for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment or order, and upon affidavit by himself or his solicitor stating that judgment has been recovered, or the order made, and that it is still unsatisfied, and to what amount, and that any other person is indebted to such debtor, and is within the jurisdiction, order that all debts owing to or accruing from such third person (hereinafter called the garnishee) to such debtor, shall be attached to answer judgment or order; and by the same or any

sub
app
suc
pay
det
suff
Sec
15
34

suff
ord
jud
Sul

for

bef
hav
per
tha
ant
dep
the
and
arr
wit
for
sha
acti
exp
pres
fort
cou
the
exp
R. 1

K, c
par
dees
Nov

subsequent order, it may be ordered that the garnishee shall appear before the court or a judge or an officer of the court, as such court or judge appoints, to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as is sufficient to satisfy the judgment or order. (E. 622). See Nova Scotia Rules. See *Ginty v. Rich*, 7 P.R. 319; *Popham v. Flynn*, 15 P.R. 286; *Cremetti v. Crom*, 27 W.R. 411; *Abud v. Riches*, 34 L.T. 713. See also SOLICITOR and cases cited thereunder.

ARREST.

Where the material used to obtain an order for arrest are sufficient and justify the arrest even although the defendant is ordered to be released from custody upon fresh affidavits the judge has power to impose terms and may withhold costs; *Sullivan v. Allen*, O.L.R. 1901, vol. 1, 53.

By *Ontario Rule 1026* the costs of, and incidental to, an order for an arrest unless otherwise ordered shall be costs in the cause.

Where the plaintiff in an action which if it had been brought before the first day of October, A.D. 1884, the defendant would have been liable to arrest, by affidavit of himself or some other person, proves to the satisfaction of a judge or of a commissioner that the plaintiff has a good cause of action against the defendant to the amount of twenty dollars or upwards, and that the deponent has probable cause for believing, and does believe, that the defendant, unless he is arrested, is about to leave the province, and that he believes that unless the defendant is forthwith arrested the debt will be lost, such judge or commissioner may, without requiring in such affidavit any statement of the ground for such belief, make an order directing that such defendant shall be arrested and imprisoned until final judgment in the action, and, if such final judgment is against him, until the expiration of thirty days thereafter, unless he sooner gives the prescribed security, not exceeding the amount sworn to, and with forty dollars for costs, that he will not, without leave of the court or judge, go out of the province until final judgment in the action, and, if such final judgment is against him, until the expiration of thirty days thereafter. (R.S.O., ch. 104, O. 44, R. 1.) See Nova Scotia Rules.

An order to arrest may be in form number 28, in appendix K, or to the like effect, and shall be made under affidavit and *ex parte*. It shall be sealed by the prothonotary and shall then be deemed to be issued. (R.S., ch. 104, O. 44, R. 2, part.) See Nova Scotia Rules.

No writ of attachment against the person shall be issued by reason only of the non-payment of the money by such person. *Manitoba Rule 697.*

No person shall be arrested or held to bail for debt or for the non-payment of money upon, under or by virtue of any writ, rule, order or process issued out of the Court of Queen's Bench. *Manitoba Rule 808.*

See also *British Columbia Rule 976.* See Sewell on Sheriffs, 437; *Mitchell v. Simpson*, 25 Q.B.D. 183; *Simpson v. Renton*, 5 B. and Ad. 35; *Gordon v. Laurie*, 18 L.J.Q.B. 98; *Dewhirst v. Pearson*, 1 Dowl. P. C. 664.

AWARDS.

Costs may be taxed on an award, notwithstanding the time for appealing from, or moving against the award has not elapsed. *British Columbia Rule 762.* See *Manitoba Rule 754 to 764*, inclusive.

This is same as *Ontario Rule 1166.* See *Andrews v. Barnes*, 58 L.T.; *Re Preston*, 16 P.R. 318; *Mordall v. Palmer*, L.R. 6 Chy. 22; *McCullough v. Clemow*, 26 O.R. 467. See also ARBITRATION, and cases cited thereunder. See also TAXATION, and cases cited thereunder.

BILL OF COSTS.

The bill of costs in question was for professional services rendered the defendant, in an investigation of his conduct as a public official before a commissioner appointed by the Ontario Government. The special circumstances relied upon to enable the defendant to obtain the order for taxation after the lapse of more than a year from the delivery of the bill was, in the words of the defendant, that "there was a distinct understanding between me and the above named plaintiffs that the payment of the said bill of costs was to lie over to await the decision of the Ontario Government, who were by both me and the said plaintiffs, as they stated, expected to pay the said bill of costs, I being one of their officers, and the charges against me having fallen through":—*Held*, that the existence of the above understanding, if proved, was not a special circumstance within the R.S.O. (1877), ch. 140, sec. 35, to justify an order for the taxation of the bill after the lapse of a year from its delivery; but that the bill should have been taxed subject to such understanding: *Fletcher v. Field*, 10 P.R. 608.

paid
sol
wa
sol
ma
obt
of
shc
to
pro
firs
tio
ord
det
ord
sta
sec
to
bet
anc
anc
sol
his
shc
chu
22'

not
13
the
to
thi
Sn

Ru

pro
sev

A bill of costs rendered by a solicitor in October, 1888, was paid shortly afterwards, but upon the undertaking of the solicitor, contained in a letter written by him, that the payment was to be subject to the taxation of the bill at any time. The solicitor died in May, 1889, and no application for taxation was made till the 2nd September, 1889, when an *ex parte* order was obtained from the Master in Chambers for taxation, the letters of the solicitor not being produced nor any special circumstance shown. Upon the application of the executrix of the solicitor to the Master to set aside his *ex parte* order, the letters were produced:—*Held*, that the Master was not bound to vacate his first order, although it was wrong; but, there being no imputation of bad faith, he was right in giving leave to amend the order so as to do substantial justice; and, notwithstanding the death of the solicitor after being paid, there was jurisdiction to order a taxation as against his representative under the circumstances. The application, being within the year, came under sec. 46 of R.S.O. (1887), ch. 147, and "special circumstances" to justify a taxation existed in the fact of the letters having been written by the solicitor; but the delay of the applicants and the death of the solicitor were reasons for imposing terms; and it was ordered that upon the taxation the books of the solicitor should be *prima facie* evidence of the correctness of his charges, or, if the books were not available, that the bill should be so taxed as to throw the costs of impeaching any charges on the applicants: *Re Baker, Re MacDonald*, 13 P.R. 227.

Rules 447-449 (Consolidated Rules 1230, 1231, and 851) are not necessarily applicable to a taxation had under 48 Vict., ch. 13 sec. 22 (Ont.); and where, upon a taxation by a local officer, these rules had not been complied with by the party objecting to the taxation, a revision was nevertheless ordered, the court thinking the bill so exorbitant as to show special circumstances: *Snider v. Orr*, 11 P.R. 140.

See SOLICITOR and TAXATION, and cases cited thereunder.

BONDS.

Where several actions are brought on one bond, *Ontario Rule 1135* makes the following provisions as to costs:—

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 indorser of a

note, or against the drawer, acceptor, or indorser of a bill of exchange, there shall be collected or recovered 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. See *Manitoba Rule 929*. See, however, *Baldwin v. Quinn*, 16 P.R. 248.

The costs of removing a bond or other security from the files of the court for the purpose of bringing an action thereon, may be taxed as costs in the cause in the action brought thereon.

In *Hagger v. Jackson*, 16 P.R. 485, it was held that on action on a bond for \$500, given as security for payment of costs in the Supreme Court of Canada, in a prior action, where judgment was given for the plaintiff for \$318.55, the amount at which the costs were taxed, that the amount recovered, i.e., \$318.55, was not ascertained by the act of the parties or by the signature of the defendants, as provided by R.S.O. ch. 47, sec. 19, and the Consolidated Rules of Practice, and that the plaintiff was entitled to tax the costs of the action the High Court scale. See also *31 Canada Law Journal*, 354.

As to Several Actions on Bonds, Notes, and Bills, etc.

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 indorser of a note or against the drawer, acceptor, or indorser 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. *British Columbia Rule 805*.

When filing appeal bonds, it is necessary not only to affix a ten cent stamp to the bond, but the necessary ten cent stamp must be affixed to each affidavit of execution and justification, as it has been held that such affidavits are separate documents and must be stamped as such when filed.

In *Boyd v. Robinson*, 20 O.R. 404, the defendants, husband and wife, executed in favour of the plaintiff, the husband's retiring partner, a bond conditioned to be void if the husband should save, defend, and keep harmless and fully indemnify the plaintiff from all loss, costs, charges and damages and expenses which he might at any time sustain or suffer or be put to for or

by r
the
plain
and
firm

then
amo
paid
the
for
dant
the

his s
copy
the
men
ques
poin
auth
the l

abbr
any
meri
instr

615;

Rail

T

allow

V

of th

and

and

of th

of th

take

neces

diffie

by reason of non-payment by the husband of the liabilities of the firm as the same became due, it being the intention and the plaintiff was thereby "indemnified or intended so to be from all and every liability of every nature and kind soever of the said firm."

Judgments were recovered by creditors of the firm against them, and the plaintiff now sued the defendants to recover the amount to pay these judgments, although he had not himself paid them:—It was held that the plaintiff was entitled to have the judgments and costs paid, and the amounts necessary were for that purpose ordered to be paid into court by the defendants; and the plaintiff was awarded costs of the action and of the motion and of the reference necessary.

BRIEFS.

A brief is a legal statement of the party's case prepared by his solicitor for the instruction of counsel and should contain a copy of the pleadings, copy of the writ of summons, a copy of the notice to produce or admit, if any, also a copy of any documents and of all correspondence dealing with the matters in question in the action. It should contain a summary of the points of law questions involved in the action, with a citation of authorities, if authorities are relied on, and of the principles of the law involved.

Wharton's definition of a brief is as follows: "A brief is an abbreviated statement of the pleadings, proofs and affidavits in any legal proceedings, with a concise narrative of the facts and merits of the plaintiff's case or defendant's defence, for the instruction of counsel at the trial or hearing."

As to contents of brief see *Haslam v. O'Conner*, 6 Ir. Eq. 615; *Arch. Pr.*, 601; *Pilgrim v. Southampton and Dorchester Railway Co.*, 8 C.B. 35; *Morris v. Armit*, IV. 307 (Man.).

There appears to be no settled practice for allowing or disallowing copies of examinations for discovery in briefs.

Where there is an examination, and the party obtains a copy of the examination, this copy should be attached to the brief and it should be allowed. If second counsel has been engaged, and a counsel fee has been taxed to him at the trial, and a copy of the examination is annexed to his brief, it is in the discretion of the taxing officer to allow or disallow this copy. He must take in consideration, whether he considers the copy was necessary or whether the case was of sufficient importance or difficulty to warrant such additional expense.

Where witness fees are disallowed, that portion of the brief containing the witnesses' evidence should be disallowed; *Carlisle v. Roblin*, 16 P.R. 328; *McMicken v. Ontario Bank*, VIII. 513 (Manitoba).

No costs of briefing a document shall be allowed unless a notice to admit has been given except where an omission to give such a notice is a saving of expense.

On Chamber application briefs are never allowed.

Ontario Rule 265 provides for only four copies of any pleading, and such copies cover all copies required during the course of litigation, and by the decision in *Sparks v. Purdy*, 15 P.R. 1, extends to the copy of pleadings in the brief.

Where a cause or matter shall not be brought on for trial or hearing, the costs of and consequent on the preparation and delivery of briefs shall not be allowed, if so directed by the court or judge, or if the taxing officer shall be of opinion that such costs were prematurely incurred. *British Columbia Rule 791*.

Briefs should not contain impertinent matter or superfluous documents. If they contain such, the taxing officer should disallow the costs on taxation. The taxing officer has full discretion as to the allowance for the length of briefs and for the copying of letters and other documents set out in the brief. No general Rule has been formulated by the court as to what documents it is proper to copy for the instruction of counsel, for use at the trial, or otherwise. Thus where a cause has been made a *remanet* and correspondence took place between the respective solicitors for the parties with a view to having the action referred, the taxing officer in taxing the costs disallowed copies of this correspondence as part of the brief: *Pilgrim v. Southampton*, 8 C.B. 335.

CASE REMITTED TO COUNTY COURT.

Where an action is ordered to be tried in a County Court the costs of the action shall, subject to the provisions of any Act and these Rules, follow the event, unless by the registrar's certificate of the result of the trial it shall appear that the judge before whom the action was tried was of opinion that the question of costs ought to be referred to a judge of the Supreme Court, in which case no costs should be recovered unless ordered by the court or judge: *British Columbia Rule 754*.

A
issue
upon
certif
right
10 P.
Galt

C
court,
stamp
cents
cents

W
be tax
the ta
amou
that 1
Rule

U
costs
recogn
action
howev
of the
So wh
ignora
court 1
7 Man.
Johnst
644;
B.C.R.

At
where
unjust
the eff
applici
(Se
give th
liabilit

COST

CERTIFICATES.

A taxing officer can, during the progress of the taxation, issue a certificate of his ruling on any points in dispute and upon such certificate, an appeal may be had; but once the final certificate is issued, the taxing officer is *functus officio*, and his right to issue such a certificate ceases: *Langtry v. Dumoulin*, 10 P.R. 44. See also *McCallum v. McCallum*, 11 P.R. 179; *Galt v. Collins*, 12 P.R. 413.

Certificates of *lis pendens*, or any other certificates of the court, requiring a seal of the court, must have a one dollar stamp affixed; fifty cents being for the certificate and fifty cents for the seal. In addition to the one dollar stamp, ten cents for each folio must be added. (*Ontario*.)

Where any costs are by any judgment or order directed to be taxed and to be paid out of any money, or fund, in court, the taxing officer, in his certificate of taxation, shall state the amount of all such costs as taxed, without any direction for that purpose in such judgment or order. *British Columbia Rule 787*.

CERTIORARI.

Under its general powers the court has authority to grant costs to the successful party, even although there was no recognizance (a) and such costs may be recovered in a civil action unless barred by order of the court (b). Generally, however, costs are not given against the prosecutor or a justice of the peace, etc., except on the ground of misconduct (c). So where a justice of the peace acted improperly through gross ignorance, and with no intention of violating known laws, the court refused to award costs against him: (a) *Regina v. Starky*, 7 Man. R. 262; (b) *Regina v. Somers*, 24 O.R. 244; (c) *Regina v. Johnston*, 38 U.C.R. 549. See also *Regina v. Coutts*, 5 O.R. 644; *Regina v. Coulson*, 24 O.R. 246; *Regina v. Little*, 6 B.C.R. 21; *Re Rice*, 20 N.S.R. 437.

At the time of serving notice of application for certiorari, where the conviction is manifestly bad, and where it appears unjust to put the defendant to additional expense, a notice to the effect that unless the prosecution is abandoned costs of applying for further relief would be asked.

(See form of notice in Appendix of Forms.) This will give the magistrate and prosecutor an opportunity to avoid liability for costs, and they can have no just cause for complaint

if on the hearing costs are awarded against them: *Regina v. Smith*, 31 N.S.R. 607; *Regina v. Westlake*, 21 O.R. 621; *Queen v. Nichols*, 21 N.S.R. 288; *Queen v. Ward*, 21 N.S.R. 19.

CHAMPERTY.

In order to render an agreement void on the ground that it is in the nature of champerty, it is not necessary that it should amount strictly to champerty as a punishable offence: *Rees v. DeBernardy*, 65 L.J. Ch. 656.

An agreement may amount to champerty or maintenance or savor of champerty if made between persons not standing in the relation of solicitor and client, or in any analogous relation, and such an agreement if not amounting strictly to champerty or maintenance so as to constitute a punishable offence may still be against the policy of the law and such as a Court of Equity ought to discourage and relieve against: *Reynell v. Sprye*, 8 Hare 274, affirmed 21 L.J. Ch. 633.

The essence of the common law offence of maintenance consists in the criminal intention with which the act is done, so that when several persons against all of whom a general claim is to be made by a third party, enter into an agreement to uphold each other in resisting this claim, it is not an act of maintenance if they do so in a *bonâ fide*, though erroneous, belief that they were united in the defence of a common suit: *Findon v. Parker*, 12 L.J. Ex. 444.

The doctrine as to maintenance is not applicable to criminal proceedings: *Grant v. Thompson*, 72 L.T. 264; *Bradlaugh v. Newdigat*, 11 Q.B.D. 1.

It is a good defence to an action for maintenance that the defendant assisted a third person from charitable motives, believing that he was a poor man oppressed by a rich man. It is not necessary that the defendant should have acted after full inquiries into the circumstances, but the defence will be equally valuable even if the defendant, had he made inquiries, would have ascertained that there was no reasonable or probable ground for the proceeding which he assisted: *Harris v. Driscoe*, 34 W.R. 729.

Where a solicitor agrees to institute proceeding and prosecute a claim to judgment at his own expense in consideration of receiving one-fourth of the amount he should recover, such agreement is champertous and void: *O'Connor v. Gemmill*, 26 A.R. 27. See R.S.O. ch. 174, sec. 54.

A solicitor for the Supreme Court of Judicature for Ontario who, as such, does business in carrying on proceedings for a

client
provis
taxati
of suc
referr
(1898

TI
Crow
made
that t
sidera
would
sum v
them
a cha
Ball v
and S

Al
were
jurisdi
solicit
in sati
dants
the Co
remun
Solicit
to del
betwe
dants
to be
the fo
Armoi
29 O.F

WI
any es
court i
or is p
or his
the pro
preserv
upon s
represe
paymen

client in the Exchequer Court of Canada is subject to the provisions of the Solicitors' Act with regard to delivery and taxation of his bill of fees, charges or disbursements, in respect of such business: *O'Connor v. Gemmill*, 26 Ont. App. 27, above referred to, reversing, in part, 29 O.R. 47, and C.A. Dig. (1898) 433.

The plaintiff, the suppliant in an action brought against the Crown, by its permission, in the Exchequer Court of Canada, made an agreement with the defendants, a firm of solicitors, that they should conduct her case to judgment, and in consideration of their doing so at their own expense, that they would be entitled to retain to their own use one-fourth of the sum which should be recovered, and she assigned her claim to them as security for the performance of the agreement:—*Held*, a champertous agreement and not binding on the plaintiff. *Bull v. Warwick*, 50 L.J.N.S. (C.L.) 328; and *In re Attorney and Solicitors' Acts*, 1 Ch.D. 573, followed.

Although the services of the defendants under the agreement were performed in a Dominion court, a Provincial court had jurisdiction to enter an action for an account against the solicitors in respect of moneys received by them for the Crown in satisfaction of the claim. The service performed by defendants in the Exchequer Court was not performed as officers of the Court of Ontario, and with respect to such services and the remuneration therefor, the defendants were not subject to the Solicitor's Act, R.S.O. 1887, ch. 147, and could not be compelled to deliver a bill of costs. In the absence of a tariff of costs between solicitor and client in the Exchequer Court the defendants were entitled to remuneration upon a *quantum meruit*, to be established by such evidence as would be appropriate in the forum of litigation. *Paradis v. Bosse*, 21 S.C.R. 419, and *Armour v. Kilmer*, 28 O.R. 618, followed: *O'Connor v. Gemmill*, 29 O.R. 47.

CHARGING ORDERS.

Where a solicitor has been employed to prosecute or defend any cause, matter or proceeding, it shall be lawful for the court in which the cause, matter or proceeding has been heard or is pending, or for a judge thereof, to declare such a solicitor or his personal representative to be entitled to a charge upon the property of whatever nature, tenure or kind, recovered or preserved through the instrumentality of such solicitor; and upon such declaration being made, such solicitor or his personal representative shall have a charge upon all costs and a right to payment out of the property so recovered or preserved for the

taxed costs, charges and expenses of or in reference to such cause, matter or proceedings, and all conveyances and acts done to defeat, or which may operate to defeat, such charge or right, shall, unless made to a *bonâ fide* purchaser for value without notice, be absolutely void and of no effect as against such charge or right.

The court or judge may make such order for taxation of such cause, charges and expenses, and for the raising and appointment of the same out of the said property as may seem just, but no such order shall be made where the right to recover payment of such costs, charges and expenses is barred by any Statute of Limitation. The nature of this charge is more extensive and more beneficial to a solicitor than the ordinary lien for costs, as it extends to almost every kind of property and will entitle the solicitor holding the charge to apply for a sale of the property subject thereto. It is in the nature of a statutory mortgage, and can be registered in the proper registry office. The costs of applying for the charging order under this rule will be allowed to solicitor as between solicitor and client: *Waterland v. Serle* (1897), W.N. 163.

This rule was passed on the 1st of September, 1897, and enables the court, as stated in the rule, to order that land recovered by the exertions of a solicitor should be charged for his benefit. No such power existed as to land prior to this rule. See *Ontario Rule 1129*.

See *Baile*, 13 Eq. 497; *Jones v. Frost*, 7 Ch. 773; *Pinkerton v. Easton*, 16 Eq. 490; *Owen v. Henshaw*, 7 Ch. D. 385; *Austin v. Jackson*, 11 Ch. D. 942; *Brown v. Trotman*, 12 Ch. D. 890; *Pierson v. Knutsford Estates Co.*, 13 Q.B.D. 666; *Greer v. Young*, Ch. D. 545; *Guy v. Churchill*, 35 Ch. D. 489; *McFarlane v. Lister*, 37 Ch. D. 88.

An application by the solicitor for the infant plaintiff, under *Ontario Rule 1129*, for an order charging the amount of the judgment recovered by the plaintiff against the defendant with the costs incurred by the applicant, as between solicitor and client:—

Held, that by Rule 1129, a discretionary power is given to the court; the solicitor has no absolute right to the charge, but only power to ask the court, in the exercise of its discretion, to make the charge: *Re Humphries* (1898), 1 Ch. 526. The rule gives the solicitor an ancillary right—one not intended to displace the liability of the client to pay the solicitor out of his own pocket, but ancillary to his right to be paid on his retainer: *Groom v. Cheesewright* (1895), 1 Ch. 730. Here the retainer

was g
was r
that t
solicit
the s
groun
go.

O
charg
solicit
or dis
Tl
solicit
the cl
Nevil

W
gener
the ch
power
made

W
claim,
groun
comm
sion of
he ma
the pl
either
orders

A
matter
mence
L.R. 5
Perkin
558.

Wl
costs a
abated

was given by the father of the infant, and the infant plaintiff was not liable to the solicitor for any of the costs. It was just that the costs taxed against the opposite party by virtue of the solicitor's exertions should be charged or impounded to answer the solicitor's lien. But beyond this, in the case of actions grounded on personal injuries to infants, the court ought not to go.

Order made directing that the judgment should stand charged to the extent of the taxed costs in favour of the solicitor, and enjoin the infant and next friend from receiving or disposing of the same. No costs of the application.

The Chancellor subsequently refused an application by the solicitor for the plaintiff to add to the order a direction that the charge should be enforced by the sale of the judgment: *Neville v. Ballard*, 34 C.L.J. 399.

CHATTEL MORTGAGE.

Where a chattel mortgage is executed by an agent, the general power of attorney, or a copy thereof, must be filed with the chattel mortgage. No charge can be made for filing the power of attorney, or a copy thereof, as there is no provision made in the statute for such a charge. See R.S.O. ch. 148.

CONFESSION OF DEFENCE.

Where any defendant in his statement of defence or counter claim, whether by way of amendment or otherwise, alleges any ground of defence or counter claim which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence, which confession may be in form 54, and he may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the court or a judge shall, either before or after delivery of such confession, otherwise orders. *Ontario Rule, 295.*

A confession of a defence under this Rule determines the matter in litigation, and the plaintiff is not at liberty to commence a second action for the same cause: *Newington v. Levi*, L.R. 5 C.P. 607. See also *Ellis v. Munson*, 36 L.T. 585; *Perkins v. Beresford*, 47 L.T. 515; *Patterson v. Smith*, 14 P.R. 558.

CONTINUING PROCEEDINGS.

Where a judgment or order has been made for payment of costs and the action or matter would, but for these Rules, have abated, any person interested upon the judgment or order may

continue the proceedings, and thereupon enforce the judgment or order. *Ontario Rule 404*, taken from R.S.O. 1877, ch. 40, sec. 102.

CONTRIBUTION BETWEEN CO-DEFENDANTS.

The costs of all parties liable to make a contribution should be added together, and borne by them in proportion to the shares in which they are bound to contribute. One co-defendant cannot, by some independent proceeding, obtain contribution in respect of such costs against the others: *Moye v. Sparrow*, 22 L.T. 154; *Middleweek v. Dearsly*, 45 L.T. 400.

Where one of several co-defendants has been compelled to pay the whole costs, the court will decree contribution from the other defendants. Decree against several for payment of costs is joint and several; but the costs against it are in the nature of a debt and, therefore, there must be contribution between the parties liable: *Pitt v. Bonar*, 6 J.R. 636; *Dublin v. Trimleston*, 13 Ir. Eq. R. 98.

Where defendants separate in their defence, a plaintiff who obtains judgment against them is entitled to costs against them jointly, and each defendant is liable for the costs of his separate defence, but not liable for any costs occasioned solely by the other: *Merchants Bank v. Houston*, 7 B.C.R. 352.

COMMISSION IN LIEU OF COSTS.

In all actions or proceedings instituted for administration or partition, or administration and partition, unless otherwise ordered by the court or by 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 proceedings, shall be entitled to his actual disbursements in the action or proceeding, not including counsel fees, and there shall be allowed for 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; such commission shall be apportioned among the persons entitled to costs as the judge or Master thinks proper. Such commission shall be as follows:—

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

and
betw
" bet

part
the :
shou
invo
and
solic
in a
ques
will,
comm
amo
367.
C.L.
Rule

I
evid
miss
comm
cons
appc
ques

juris
part,
Collb
In C
exec
taxi

juris
obta
the
even
comm
trial
Rom

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." *Ontario Rule 1146*.

The commission, of course, is to be divided among those parties to the action or proceeding who would be entitled in the absence of the above Rule to be awarded taxed costs, and should be apportionate to the work done and responsibility involved. Parties who have been added in the Master's office, and who have the same interest as parties already appearing by solicitor, are not entitled to share in the commission. Where, in addition to the simple administration of the estate, other questions are involved, as for example, the construction of a will, costs will be allowed up to judgment in addition to the commission. The commission is to be calculated on the total amount accounted for. See *Re Brown v. Brown*, 19 C.L.J. 367. See also *Fleury v. Fleury*, 9 P.R. 87; *Wright v. Bell*, 32 C.L.J. 362. See *Manitoba Rule 938*, also *British Columbia Rule 991*.

COMMISSION TO TAKE EVIDENCE.

By the Rules upon the application for a commission to take evidence, where the opposite party desires to join in the commission and examine witnesses, on his own behalf, or names a commissioner, each party shall pay the costs of the commission consequent upon the examination of his witnesses, and the appointment of his commissioner, without prejudice to the question by whom such costs are ultimately to be borne.

The costs of taking evidence by commission, outside the jurisdiction of the court, even when commission is to examine a party on his own behalf, are generally costs in the cause: *Colborne v. Thomas*, 4 Gr. 169; *Brunton v. Hardy*, 10 W.R. 562. In *Colborne v. Thomas*, 4 Gr. 169, it was held that the costs of executing a commission were entirely in the discretion of the taxing officer.

Where a second commission to take evidence outside the jurisdiction was granted to the defendant (he having already obtained a commission to the same place), he was ordered to pay the costs including the costs of the second commission in any event of the action: *Gill v. Ellis*, 5 B.C.R. 37. Costs of commission disallowed where evidence was not used at the trial: *Dominion Co. v. Stinson*, 9 P.R. 177. See, however, *Rondot v. Monetary Times*, 18 P.R. 141.

COMPROMISE TO DEFEAT SOLICITOR'S LIEN.

In re Margetson (1897), 2 Ch. 314, in this case, Kekewich, J., reaffirmed the well settled rule that the parties to a litigation although at liberty to compromise their difference without the intervention of their solicitors, provided they do so honestly and without any intention to cheat the solicitors of their costs; yet wherever the compromise is effected for the purpose of cheating a solicitor, the latter will have a right to an order for payment of his costs, notwithstanding the compromise. In the present case Pugh retained Mr. Margetson to obtain the delivery of a bill of costs by Mr. Jones and a taxation thereof. Before the taxation was completed Jones, without Margetson's knowledge and with the intention of stopping the taxation and so defeating Margetson's lien for costs, paid Pugh, who was in distressed circumstances, a small sum in settlement of the taxation, which was consequently dropped. Margetson thereupon applied to Kekewich, J., for an order to compel Jones to pay his costs up to the time of the compromise, which was granted, the judge being of opinion that Jones being a solicitor must have known from the circumstances of Pugh that the money paid by him would not be applied towards payment of Margetson's costs. A point of practice also arose in the case which is worth notice. The case of the applicant was not made out on his own affidavits, but affidavits were filed in answer, which he claimed to be entitled to read, and which supplied what was lacking in his own affidavits. The respondents objected, but Kekewich, J., held that the applicant was entitled to use his opponent's affidavits to make out his own case.

The defendant in an action acting in good faith, settles an action with the plaintiff in such a way as to deprive the plaintiff of his costs. The plaintiff's solicitor is not entitled to leave to proceed with the action for the recovery of his costs: *Rideout v. McLeod*, 6 B.C.R. 161. As to power of solicitor or counsel to compromise an action see *Mathews v. Monster*, 20 Q.B.D. 141; *Watt v. Clark*, 12 P.R. 359; *Lewis v. Lewis*, 63 L.T. 84; *Hackett v. Bible*, 12 P.R. 482; *Duffy v. Hanson*, 16 L.T. 332.

COPIES.

Every writ, pleading, or other document may be printed or written in whole or in part, but no more than four copies thereof exclusive of the draft, but inclusive of all other copies that may be required or made in the progress of the case, shall be allowed.

requ
prin
30 c
reas

foot
exai
can
for t
(
judg
Ren
See
I
prin
plea
caus
that
Onto
I
requ
have
parti
of al
writ,
for p
A
with
copie
T
all co
plead
A
party
order
the so
or ex
folio;
refus
the c
solicit
in res

If more than three copies, exclusive of the draft, are required, the party may have the writ or pleading or document printed, and he shall, in lieu of all charges for copies, be allowed 30 cents per folio of the writ, pleading or document, and his reasonable disbursements for printing.

In *Gage v. Canada Publishing Co.*, 19 C.L.J. 175, Proudfoot, J., held that where a trial was adjourned after the examination of a number of witnesses, that the successful party can tax the costs of procuring a copy of the evidence so taken for the use of counsel at the adjourned trial.

Copies of depositions taken for use upon a motion for judgment are not taxable in a party and party taxation: *Rennie v. Block*, 17 P.R. 317. (This decision is now of no effect. See *Ontario Tariff*, item 61.)

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 exclusive of the draft, but inclusive of all other copies that may be required or made in the progress of the case. See *Ontario Rule 265 (1)*, and *Manitoba Rule 394*.

If more than three copies, exclusive of the draft, are required of any pleading or other document, the party may have the writ, pleading or other document printed for the parties of the cause or manner, and in that case he shall, in lieu of all charges for copies, be allowed 30 cents per folio of the writ, pleading or document, and his reasonable disbursements for printing. See *Ontario Rule 265 (2)*.

A writ of summons is a "pleading or other document" within the meaning of *Ontario Rule 265*, and more than four copies cannot be taxed.

The provision of *Ontario Rule 265* as to four copies covers all copies required during litigation, and extends to the copy of pleadings in the brief: *Sparks v. Purdy*, 15 P.R. 1.

As to taking copies of documents in possession of another party, or extracts therefrom, under rules of court or any special order, the party entitled to take the copy or extracts is to pay the solicitor of the party producing the document for such copy or extract as he by writing requires, at the rate of ten cents per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereto. *Nova Scotia Rule*.

In *Sparks v. Purdy*, 15 P.R. 1, above referred to, it was held that a writ of summons was "a pleading or other document" within the meaning of Rule 265, and only four copies could be taxed. The four copies cover all copies required during the course of the litigation, and extends to copies of the writ of summons and to copies of pleadings in the briefs.

The disbursements incurred in obtaining copies of the evidence for the purpose of moving against a judgment for a new trial, shall, unless the court otherwise orders, be costs in the cause to the party obtaining the same.

Where the plaintiff's solicitor made six affidavits on production, it was held that he was only entitled to the costs of preparing one affidavit, with extra folios for all additional matter in the subsequent affidavits: *Baldwin v. McGuire*, 16 P.R. 248.

In order to entitle a solicitor to charge the opposite party for the costs of obtaining an exemplification of a judgment necessary for use at the trial, he must first serve a notice to admit: *Conger v. McKecknie*, 1 C.L. Cham.; *Rutter v. Chapman*, 8 M. & W. 388; *Smith v. Bird*, 3 Dowl. 641.

Where a solicitor represents two parties in a suit—as, for example, in an interpleader issue, where the solicitor represents a sheriff and the execution creditor—he is not entitled to charge the opposite parties if he is successful for supplying to himself copies of documents he has himself prepared: *Sharp v. Wright*, 1 Eq. 634.

Drawing pleadings, etc., includes copies. As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle. *British Columbia Rule 767*.

Office copies affidavits when unnecessary. In cases in which an original affidavit can be used, and to which Order 38, Rule 16, applies, it shall not be necessary to take an office copy. *British Columbia Rule 793*.

It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used as against such party. *British Columbia Rule 794*.

per
hav
an
and
by
dar
it.
his
dis
ans
of
liat
Chu
def
dan
cun
the
sub
dist

gra
the
par
Reg
880

war
cate
See

of t
com
stat
stat
48

that
Pea
app
conf

COSTS GENERALLY.

The plaintiff claimed in this action damages for injuries to person and property by alleged negligence of the defendants in having a foul drain in front of his property and also claimed an injunction. The defendants denied the plaintiff's allegations and alleged that if the plaintiff had suffered any injury it was by his own negligence. Before trial of the action the defendants opened and inspected the drain and did some work upon it. The plaintiff, professing to regard this as a compliance with his demand, asked the defendants to consent to the costs being disposed of by an order in Chambers, to which the defendants answered that the work was being done in the ordinary course of municipal work, without the intention of admitting any liability, and refused to consent. The plaintiff moved in Chambers, without consent and against the objection of the defendants, and obtained an order for payment by the defendants of the costs of the action:—*Held*, that under these circumstances there was no jurisdiction to summarily dispose of the costs in Chambers, the object of the action not having been substantially attained. *Knickerbocker v. Ratz*, 16 P.R. 191, distinguished: *Hunter v. Strathroy*, 34 C.L.J. 354.

In criminal appeals the court appealed to have full power to grant or refuse costs to the successful party. The costs are in the discretion of the court. Costs, if awarded to the successful party, includes solicitor's fees, counsel fees and witness fees: *Regina v. McIntosh*, 28 O.R. 603, *Canadian Criminal Code* 880 and 897.

Costs awarded the successful party may be enforced by warrant of distress: Criminal Code 898. See form of certificate under Criminal Code 898 and warrant of distress for costs. See APPENDIX OF FORMS.

A justice who states a case in pursuance to the provisions of the Criminal Code is protected from liability for costs in connection with such appeal; but if the justice refuses to state a case without proper reasons, the court, if it orders a case stated, will give costs against the justice: *Regina v. Bradford*, 48 J.P. 149.

This was an application under sec. 880 of the Criminal Code that the fines, costs, and costs of appeal from a Justice of the Peace be paid out of a deposit in court to the respondent, the appeal having been dismissed:—*Held*, that when a statute confers an authority to do a judicial act in a certain case, it is

imperative on those authorized to exercise the authority when the case arises and its exercise is duly applied for by a party interested and having the right to make the application: *McDougall v. Patterson*, 21 L.J.C.P. 27; *Julius v. Bishop of Oxford*, 5 A.C. 224. Application granted, and the fine, costs, and costs of appeal ordered to be paid forthwith to the respondent out of the deposit in court: *Fenson v. Westminster*, 33 C.L.J. 741.

No appeal lies from a criminal trial before a County Court Judge in Nova Scotia but by way of a case reserved, and that the judge cannot reserve a case or submit any question depending upon the facts or weight of evidence: *The Queen v. McIntyre*, 31 N.S.R. 422.

The court may, on appeal under the Criminal Code, sec. 880, award such costs, including solicitor's fees, as it may deem proper, and the High Court has no power to review such discretion: *Queen v. McIntosh*, 28 O.R. 603.

Where a liquidator of a foreign company obtained an order from the court authorizing him to intervene and defend an action, and appears by counsel at the trial and contests the claim of the plaintiff (the plaintiff having succeeded upon his claim). The plaintiff is entitled to judgment for his costs, not only against the company but against the liquidator personally: *Boyd v. Dominion Cold Storage Co.*, 17 P.R. 468.

In an administration suit the estate was insolvent, the total assets were \$72,000, the liabilities \$138,475, and the creditors 180 in number. The commission to the solicitor, who acted for all parties, was allowed by the Master, under G. O. Chy. 643 (Con. Rule 1187), at \$995. Eight creditors, at the close of the suit, and without notice to the solicitors until fourteen days before moving, applied for an order for the delivery and taxation of the solicitor's bill instead of the allowance of the commission, on the ground that the commission was excessive:—*Held*, that the commission was not so exorbitant as to warrant the substitution of a taxed bill, and a probable reduction by that mode of payment, especially as the benefit to the creditors would be trifling: *In re Stuebing, Anthes v. Dewar*, 10 P.R. 236.

Where an action of the proper competence of a County Court is brought in the High Court, or an action of the proper competence of a Division Court is brought in the High Court or in a County Court, and the judge makes no order to the contrary, the plaintiff shall recover only County Court costs, or Division Court costs, as the case may be, and the defendant shall be

ent
anc
wh
Cou
tax
Cou
am
cost
tax
exc
No

is l
cou
awa
defe
soli
cost
Cou
by t
to l
the
exce
defe
the
set
Ben
Mar

the C
Brev
P.R.
P.R.

mad
costs
defe
actua
Onto
V
judg
disbt
solic
Rule

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 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. Consolidated Rule 1172; Rules, 4th Nov., 1893, 1275. See *Ontario Rule 1132*.

In case an action of the proper competence of a County Court is brought in the Court of Queen's Bench, and the judge or court makes no order to the contrary the plaintiff, who is awarded costs, shall recover only County Court costs, 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 the defence which would have been incurred in the County Court shall, on entering judgment, be set off and allowed by the taxing officer against the plaintiff's County Court costs to be taxed, or against the costs to be taxed and the amount of the verdict if 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, but the court or a judge may by order prevent such set off or allow the plaintiff costs on the scale used on the Queen's Bench, with or without the right of set off of the defendant. *Manitoba Rule 928*. See *Talbot v. Poole*, 15 P.R. 274.

As to the meaning of the words "Taxable costs of defence" in the Ontario Rule, see also *Re Forster*, 18 P.R. 65; *Blake v. Toronto Brewing Machine Co.*, 8 C.L.T. 123; *McGarvey v. Strathroy*, 11 P.R. 87; *Sproule v. Wilson*, 15 P.R. 349; *Holmes v. Bready*, 18 P.R. 79.

An application for costs in an alimony action shall not be made until the time for delivering the defence has expired, and costs shall not be ordered to be paid *de die in diem* by the defendant, but only the amount of the cash disbursements actually and properly made by the plaintiff's solicitor. See *Ontario Rule 1144*.

Where the plaintiff in an alimony action fails to obtain 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. *Ontario Rule 1145*. See ALIMONY, and cases cited thereunder.

Where in any case or matter any bill of costs is directed to be taxed for the purpose to be paid or raised out of any fund or property, the taxing officer may, if he shall consider there is a reasonable ground for so doing, require the solicitor to deliver or send to the client, or any of them, free of charge a copy of such bill or any part thereof, previously to such officer completing the taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the bill of costs has been referred to the taxing officer, giving his name and address, for taxation, and will be proceeded with at the time that the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable. *British Columbia Rule 796.*

The plaintiff is not in any case entitled to the following costs of preparing for trial: such as instruction for brief, drawing and copying briefs and documents and advising on evidence, only after notice of trial, and cannot tax a counsel fee unless notice of trial has been served.

Where the plaintiff discontinues before notice of trial has been served, such costs cannot be taxed. In England a counsel fee is not taxable unless the action has been entered for trial.

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 acted upon before the Ontario Judicature Act, 1881, in Courts of Equity. See *Ontario Rule 1132.*

Where an action or issue is tried by jury, the costs shall, subject to *Ontario Rule 1132*, follow the event, unless the judge, before whom the action or issue is tried, in his discretion otherwise orders.

Costs of proceedings before judicial officers, unless otherwise disposed of, shall be in their discretion subject to appeal. *Con. Rule 1170: Rules, 4th Nov., 1893, 1274. 59 V.C. 18, sec. 11. Ontario Rule 1130.*

Subject to the provision of any Act and these Rules, the costs of and incidental to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the court or judge. Provided that nothing herein contained shall deprive an executor, administrator, trustee or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings, of any rights to costs out of a particular estate or fund to which he would be entitled

acc
wh
shal
751

com
in l
Bri

diet
in t

inci
of t
trus
a p
acco
Prov
cost
at tl
acti
Rul

1130

Act,
befo
proe
discr
have
costs
Act,
rules
costs
of Ju
The
and t

I
for c
there
chan
gene
T
ture

according to the rules hitherto acted upon. Provided, also, that where any action, cause, matter or issue is tried, or the court shall, for good cause, otherwise order. *British Columbia Rule 751*. See *Nova Scotia Rule 825* to same effect.

When issues in fact and law are raised upon a claim or counterclaim, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the event. *British Columbia Rule 752*.

If a cause be removed from an inferior court having jurisdiction in the cause, the costs in the court below shall be costs in the cause. *British Columbia Rule 753*.

Subject to the provisions of this Act, the costs of and incident to all proceedings in the 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 jury the costs shall follow the events, unless upon the application made at the trial, for good cause shown, the judge, before whom the action or issue is tried, or the court otherwise orders. *Manitoba Rule 926*.

Sub-sec. 1 of the Ontario Consolidated Rules of Practice, 1130, provides that, subject to the provisions of the Judicature Act, 1895, and to the express provisions of any statute heretofore or hereinafter passed, the costs of, and incidental to, all proceedings in the Supreme Court of Judicature shall be in the discretion of the court or judge: and the court or judge shall have full power to determine by whom, and to what extent, costs shall be paid. This is also embodied in the Judicature Act, R.S.O. ch. 51, sec. 119, which provides that, subject to the rules of court, and to the express provisions of any statute, the costs of, and incidental to, all proceedings in the Supreme Court of Judicature shall be in the discretion of the court or judge. The court or judge shall have full power to determine by whom, and to what extent, such costs are to be paid.

It was the practice before the passing of the Judicature Act for costs to follow the event in the common law courts, unless there was some statutory provisions to the contrary. In chancery cases costs were in the discretion of the court, but generally the unsuccessful party to the action paid the costs.

The combined effect of Rule 1130 and sec. 119 of the Judicature Act, R.S.O. ch. 51, is to keep in force any special statutory

provisions in relation to costs. See DISCRETION AS TO COSTS, and cases cited thereunder, and also *Wellbanks v. Conger*, 12 P.R. 448. *Rockett v. Chippendale*, 64 L.T. 641.

Any actions tried by a judge without a jury, the costs are in his discretion, and where the judge makes no order as to costs, no costs can be taxed or allowed to either party. *G.W. Advertising Co. v. Rainer*, 9 P.R. 495.

Where the judge simply makes an order for payment of costs, but does not direct the scale on which the costs are to be taxed, the taxing officer will have power to allow a set off as provided by *Ontario Rule 1132*. *Truax v. Dixon*, 13 P.R. 279. See also *Ontario Rule 1132*.

Where an action or issue is tried by a jury, the costs shall, subject to Rule 1132, follow the event, unless the judge in his discretion otherwise orders.

The costs in a case tried with jury or without a jury are in the judge's discretion. In actions tried by a jury the costs, in the absence of any special circumstance, must follow the event.

Sub-sec 2 of Rule 1130 limits the judge's discretion in allowing costs, and the court or a judge has no power to 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 acted upon, before the Ontario Judicature Act, 1881. In Courts of Equity the discretion of the court or judge as to costs is a judicial one, and in *Cooper v. Whittington*, 15 Ch. D. 501, it was held that the successful plaintiff was entitled to costs as of right; but in *Florence v. Mollinson*, 65 L.T. 354, where the plaintiff's action was frivolous and only nominal damages were recovered, it was held he was not entitled to costs as of right. See *Harris v. Petherick*, 4 Q.B.D. 611, and *Forget v. Ostigny* (1895), A.C. 318.

By the provisions of sec. 3, *Ontario Rule 1130*, in action or issue tried by a jury, the costs shall follow the event, unless the judge, before whom the action or issue is tried, in his discretion otherwise orders. In *Garnett v. Bradley*, 3 App. Cas. 944, it was decided by the House of Lords that in a slander action where the plaintiff obtained a verdict, no matter how small, he is entitled to costs.

The jury found a verdict for the plaintiff for \$1 in an action for slander, and the judge refused to deprive the plaintiff of his costs as his conduct was not considered reprehensible, the small-

ness
defer
judg
See
2 C.I
Nort

V
other
Peac
and
7 P.F
D.L.
419;
6 O.I

W
solic
again
17 P.

I
slan
plai
was
costs
v. Ki
cited
Week
with

Th
Comp
from
ordins
that
not ap
and ec
the pr

In
mean
what
form
costs
be ent
part o

ness of the verdict being explained by the condition of the defendant at the time the words were uttered. On appeal the judgment was affirmed on appeal: *Bell v. Wilson*, 19 P.R. 167. See also *Copeland v. Blenheim*, 11 P.R. 54; *Green v. Wright*, 2 C.P.D. 354; *Wight v. Shaw*, 191 Q.B.D. 396; *Field v. Great Northern Ry.*, 3 Ex. D. 261.

Where notice of action is made necessary by statute or otherwise, as for example, in actions against Justices of the Peace, in certain actions for libel, etc., the costs of preparing and serving such notice are taxable. *Pringle v. McDonald*, 7 P.R. 152. See also *Kent v. Great Western Railway Co.*, 4 D.L. 481; *Edwards v. Great Western Railway Co.*, 12 C.B. 419; *Connée v. Weidman*, 16 P.R. 239; *McKay v. Cummings*, 6 O.R. 400.

Where a party to an action, by an express contract with his solicitor is not liable to his solicitor for costs, he cannot tax against the opposite party. *Meriden Britannia Co. v. Braden*, 17 P.R. 77; *Jarvis v. G. W. Ry. Co.*, 8 U.C.C.P. 280, approved.

In *Croft v. Joary*, 28 N.S.R. 78, which was an action for slander, the trial judge directed that judgment be entered for plaintiff for \$5, but withheld the costs on appeal. On appeal it was held that the judge should not have withheld the costs, and costs were ordered to be paid by the defendant. See *Stevenson v. Kingston*, 31 C.P. 333 and *Jarvis v. G. W. R. Co.*, 8 C.P. 280 cited above. See also *Mahon v. Gammon*, 4 R. & O. 232. In *Weeks v. Bonham*, 2 R. & C. 303 (Nova Scotia) costs were withheld on decision of new and doubtful points.

The defendant was a foreman of the Grand Trunk Railway Company Elevator, and superintended the unloading of grain from an elevator on Sunday, and was convicted of following his ordinary calling on the Lord's Day. On appeal it was held that R.S.O. ch. 246 does not apply to railways, and as it does not apply to railways it could not apply to railway employees, and consequently the conviction was quashed with costs against the prosecution: *The Queen v. Reid*, 30 Ont. R. 732.

In *Cameron v. Campbell*, 1 P.R. 170, Burns, J., explains the meaning of the phrase, "Costs in the Cause." "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 parties 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, but if not provided for they do not form part of the costs of the cause."

Where the phrase "costs in the cause" in an award were used as follows: "We also order and award that the plaintiff and defendants shall each pay half of the costs of the cause, and that the defendant shall pay all the costs of the reference and award, our costs of which reference and award 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 defendant: *Scott v. G. T. R.*, 3 P.R. 276.

An interlocutory order directs that the costs of certain proceedings shall be costs in the cause. It does not finally dispose of such costs in favour of the party who eventually succeeds in the action, it simply puts the costs in the same position as any other ordinary costs of the action, and the trial judge can deal with them under *Ontario Rule 1130*, and section 119 of the Judicature Act R.S.O. 1897, ch. 51: *Dickerson v. Radcliffe*, 19 P.R. 223; *Koosen v. Rose*, 76 L.T.N.S. 145, distinguished.

Costs of moving to postpone a trial on account of the absence of a material witness will be costs in the cause where the party moving has made diligent efforts, etc., to secure the attendance: *Brown v. Porter*; *Knox v. Porter*, 11 P.R. 250.

In an appeal against an order refusing further security for costs, the appeal was dismissed, and the costs made costs in the cause to the plaintiff. *Bell v. Landon*, 9 P.R. 100.

The plaintiffs obtained an order for the issue of a foreign commission to examine a witness. The order contained the usual direction that the costs be costs in the cause. The evidence was taken but was not put in at the trial. *Boyd, C.*:—*Held*, that the direction in the order as to costs did not preclude the taxing officer from disallowing the costs to the plaintiffs, on the ground that the evidence had not been used: *Dominion, etc., Co. v. Stinson*, 9 P.R. 177.

The venue in an action to restrain the infringement of a patent was changed, without terms, to Brockville. As the defendant had been slow in applying, the costs of the application below and in appeal were made costs in the cause: *Aitcheson v. Mann*, 9 P.R. 253.

Costs in the cause are costs of all interlocutory proceedings which are not otherwise provided for.

I
expl
phra
circu
to tri
couns
not 1
plain
did r
the 1
charg
where
and a
charg
taxin
the t
this
discre
arbitr
TI
absol
for no
costs
the d
Zink
Th
O.J.Ac
for su
defend
Rule
entert
Smith,
By
parties
lien fo
sought
the ad
and B
also B
In
of dan
actions
See als

In *Outwater v. Mullet*, 13 P.R. 509, Armour, C.J., thus explains the meaning of the phrase, "costs of the day":—"The phrase 'costs of the day' is a general term applicable to different 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 the record, and in such cases it became and was the practice of taxing officer, although a counsel fee was chargeable, to tax only \$10.00. 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. Under the terms, costs of the day, used in the order made by me in this case, counsel fees were chargeable according to the discretion of the taxing officer, and not according to any arbitrary limit."

The rule for costs of the day for not proceeding to trial is absolute in the first instance. Costs of the day will be allowed for not proceeding to assess damages pursuant to notice. The costs of a special jury are costs in the cause and not costs of the day. See also *Goodfellow v. Shuttelworth*, 3 C.L.T. 105; *Zink v. Zink*, 1 Old. 721 (Nova Scotia).

The practice of giving costs of the day is superseded by the O.J. Act. No officer of the court has now power to issue a rule for such costs. Where the plaintiff fails to enter the cause, defendant should apply to a judge under Rule 264 (Consolidated Rule 665). The Master in Chambers has no jurisdiction to entertain an application for costs under that rule: *Hopkins v. Smith*, 9 P.R. 285. See *Hogg v. Crabbe*, 12 P.R. 14, p. 384.

By *Ontario Rule 1165* a set-off of damages or costs between parties shall not be allowed to the prejudice of the solicitor's lien for costs in the particular action in which the set-off is sought, but interlocutory costs in the same action awarded to the adverse party may be deducted. See *Manitoba Rule 949*, and *British Columbia Rule 761*. See CHARGING ORDER. See also *Blakey v. Lathan*, 41 Ch.D. 518; *Re Clark*, 15 P.R. 269.

In *Turner v. Drew*, 17 P.R. 475, it was held that a set-off of damages and costs between the same parties in different actions cannot be ordered to the prejudice of a solicitor's lien. See also *Young v. Hobson*, 8 P.R. 253; *Cuthbert v. Commercial*

Travellers' Association, 7 P.R. 255; *Ross v. McLay*, 7 P.R. 97; *Wardell v. Trenouth*, 8 P.R. 142; *Moody v. Bank of Commerce*, 14 P.R. 258.

In *Clark v. Eccles*, 3 Chy. Ch. 324, it was held that where an order changing solicitors during the progress of proceedings was obtained, that the fact did not deprive the original solicitor of his lien for costs on any fund afterwards recovered in the cause, but that the original solicitor was entitled to be paid his costs next, after the costs of the solicitor who finished the suit. See also *Knight v. Gardiner*, 66 L.T. 646; *Cock v. Bliss*, 1 R. & C. 299 (Nova Scotia).

A solicitor's lien on the papers and documents of his client which have come into his possession during the course of their business relations, cannot be actively enforced. The solicitor has a mere right to retain the documents in his possession until costs are paid, but the lien is general and is not confined to the costs incurred in the particular business in which the documents came into the hands of the solicitor. The solicitor's lien on books, papers and documents in his possession is subject, however, to parties claiming same by a superior title to that of the client. See *Bozon v. Bolland*, 4 My. & Gr. 354; *Colmer v. Ede*, 19 W.R. 313; *Re Biggs*, 102 L.T. 364; *Francis v. Francis*, 5 D. M. & G. 108; *Ex parte Pulbrook*, 4 L.R. Chy. 627; *Bell v. Taylor*, 8 Sim. 216; *Re Mosely*, 15 W.R. 975; *Stedman v. Webb*, 4 My. & Gr. 346; *Young v. English*, 7 Beav. 10.

Solicitors have also a lien for their agency bills on papers placed in their hands by their principals. See *Re Attorney*, 7 P.R. 311.

As to a solicitor's lien on a fund recovered by his exertions: See *Lann v. Church*, 4 Mad. 391; *Wright v. Bell*, 24 S.C.R. 656; *Re Garland*, 53 L.T. 921. Unlike a lien upon papers and documents, a solicitor's lien upon a fund may be actively enforced. See *Bozon v. Bolland*, cited above; *Wardell v. Trenouth*, 8 P.R. 142; *Re Harraed, Wilde v. Walford*, 51 L.T. 441.

It would appear that a client cannot transfer his right to a fund in court as to defeat a solicitor's lien. See *Yomen v. Johnston*, 11 P.R. 231. As to the set-off between the parties: See *Ross v. McLay*, 7 P.R. 97; *Wardell v. Trenouth*, 8 P.R. 142; *Young v. Hobson*, 8 P.R. 253; *Flett v. Way*, 14 P.R. 312; *Brown v. Nelson*, 11 P.R. 121; *Canadian Pacific R.W. Co. v. Grant*, 11 P.R. 208.

to b
or of
out
defe
settl
or m
V
in co
whic
atter
unles
allow

S
action
been
credit
seeki
the su
by th
Rules
Court
that
necess

W
are b
defenc
only l
have
Bilton
W
entitle
Ellis
Th
for a r
The n
make
Englis
counte
P.R. 1

Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first settling down, although he does not obtain the costs of the cause or matter. *British Columbia Rule 792.*

Where any party appears upon an application or proceeding in court or in 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. *Manitoba Rule 942.*

COUNTY COURT ACTIONS ON MORTGAGE.

Sub-sec. 11, R.S.O. ch. 55, R.S.O. 1897, is as follows:—In actions 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 otherwise, to enforce his security where the same claim as due does not exceed \$200. It has been held by the Chancellor, Meredith, C.J. and Rose, J., that the *Ontario Rules 1167-70* do not apply to actions brought in the County Court under the above section of the County Court Act, and that revision by one of the taxing officers at Toronto is not necessary.

COUNTER-CLAIM.

Where the plaintiff claim and the defendant's counter-claim are both dismissed with costs, the plaintiff is to pay to the defendant the general costs of the action, and the defendant is only liable to pay the plaintiff the amount for which the costs have been increased by reason of the counter-claim: *Saner v. Bilton*, 11 Ch. D. 416. See also *Atlas v. Miller*, 79 L.T. 5.

Where defendants substantiates their counter-claim they are entitled to costs: *Gray v. Davidson*, 5 Ex. D. 189. See also *Ellis v. Desilva*, 6 Q.B.D. 521; *Person v. Ripley*, 32 W.R. 463.

The counter-claim of a defendant is a claim by the defendant for a relief which it is impossible for him to obtain in the action. The mere fact that a claim is called a counter-claim does not make it one. The Ontario law as to set off is different from the English law, for in Ontario a set off should not be treated as a counter-claim nor pleaded as such. See *Girardot v. Welton*, 19 P.R. 162, affirmed 19 P.R. 201.

Where the plaintiff succeeds on his claim and the defendant succeeds on his counter-claim the costs should be taxed as far as possible as though they were two actions, in one of which the plaintiff succeeds and in the other the defendant succeeds. The plaintiff is entitled to the costs applicable to his claim and the defendant to those applicable to his counter-claim. The defendant's costs commence with instructions for defence and counter-claim: *Sharpnel v. Laing*, 20 Q.B.D. 334; *Amon v. Bobbett*, 22 Q.B.D. 543.

Where the action is tried by a jury and both claim and counter-claim are dismissed with costs the plaintiff must pay the general costs of the action, the defendant only those incurred by the counter-claim: *Saner v. Bilton*, 11 Ch. D. 416; *Mason v. Brentini*, 15 Ch. D. 287.

COUNSEL FEES.

A counsel, conducting his own case, cannot tax a counsel fee against the opposite party: *Smith v. Graham*, 2 U.C.Q.B. 268. See *Clarke v. Creighton*, 25 C.L.J. 387; 15 P.R. 105. Where counsel is one of the several trustees, and acts for himself and his co-trustees as counsel in an action, he is entitled to tax a counsel fee, and if he acts as solicitor he is entitled to tax against the opposite party his full costs, including instructions: *Strachan v. Ruttan*, 15 P.R. 109. *Craddock v. Piper*, 1 Mac. & G. 664, followed.

The taxing officer, in determining the amount of the counsel fees, should take into consideration the pleadings, evidence and importance of the case, also the number of witnesses and difficulty of the case generally.

In *Bobock v. Peters*, 13 Man. R. 124, counsel fees actually paid are to be included among the actual disbursements under the MECHANICS LIEN ACT.

A solicitor suing in person and acting as counsel at the trial cannot tax counsel fee if successful: *Smith v. Graham*, 2 U.C.Q.B. 268.

Counsel fee, on attendance to obtain an *ex parte* order, is not taxable in a party and party taxation: *Carlisle v. Roblin*, 16 P.R. 328.

The discretion of a taxing officer as to the amount of counsel fees will not be interfered with upon an appeal: *Talbot v. Poole*, 15 P.R. 274. See also *Smith v. Harwood*, 17 P.R. 36; *Morris v. Armit*, 4, 307 (Man.).

is o
taxi
not
cite
;
solic
to a
clear
impe
l
of a
whic
was
the j
to a
a ref
l
incre
not l
allow
T
occu
devot
dants
what
with
\$302
the a
H
under
only
invol
officer
time
discre
of \$1
as we
Tl
appea
paid t

Where an action is strenuously contested on both sides, and is of a special and important character, the discretion of the taxing officer in allowing fees to senior and junior counsel will not be disturbed on appeal: *Carlisle v. Roblin*, 16 P.R. 423, cited above.

See *Re Robinson*, 16 P.R. 423, where it was held that on a solicitor and client taxation, the taxing officer had no discretion to allow increased counsel fee with brief at trial, as it was clearly manifest that the action was not of a special or important character.

Upon appeal from the taxation between solicitor and client of a bill of costs for the defence of an action of redemption, in which, before the beginning of the sittings at which the action was entered for trial, an arrangement had been made between the parties that all the matters in question should be referred to a Master, and accordingly no witnesses were subpoenaed, and a reference was directed at the sittings:—

Held, that the taxing officer had no discretion to allow an increased counsel fee with brief at the trial, as the action could not be said to be of a special and important character, nor to allow a fee for advising on evidence.

The reference lasted for 137 hours, eighteen of which were occupied in argument. Nearly the whole of the time was devoted to the main matter in contest, viz., whether the defendants should be charged with an occupation rent, and, if so, at what amount. The Master found that they were chargeable with a rent of \$312.50. The taxing officer allowed the solicitor \$302 for the time occupied in taking the evidence, and \$47 for the argument:—

Held, that the allowance of counsel fees upon a reference under clause 107 of the tariff should be exceptional, and made only when matters of special importance or difficulty are involved at some particular sitting; and also that the taxing officer should have taken into consideration the unreasonable time occupied over so small a matter, and have exercised his discretion by confining the solicitor to the minimum allowance of \$1 an hour, under clause 104 of the tariff, for the argument as well as for the taking of the evidence.

The taxing officer allowed the solicitor \$77.50 for brief upon appeal from the Master's report; this amount included \$67.80 paid to the Master for copies of the depositions.

Held, that the solicitor had no *prima facie* right to order and charge for these copies, and in the absence of any authority from his clients should not be allowed for them upon taxation.

The taxing officer allowed the solicitor \$35 counsel fee upon the appeal, \$12 for travelling expenses, and \$10 counsel fee upon the plaintiff's motion for judgment which came before the court with the appeal.

Held, that the allowances, though liberal, were not so clearly wrong as to justify the court interfering. *Re Robinson*, 16 P.R. 423. (An appeal to the Court of Appeal was dismissed, the members of the court being divided in opinion as to the regularity of the taxation.) See also *O'Connor v. Brown*, V. 263 (Manitoba); *Livingston v. Rowand*, VIII. 298 (Manitoba).

Where evidence taken before the 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*, P.R. 405.

On an application for further security for costs a counsel fee of \$10 was allowed: *Bell v. Landon*, 9 P.R. 100.

Where the actions were in the Court of Appeal, Burton, J. A. made an order that only one appeal book should be printed for the three cases, and the three cases were argued together, but the defence was different:—*Held*, that the taxing officer was right in allowing separate counsel fees in each case: *Petrie v. Guelph Lumber Co.*; *Stewart v. Guelph Lumber Co.*; *Inglis v. Guelph Lumber Co.*, 10 P.R. 600.

Where the defendant's solicitor was served with a short notice of motion, which was admitted to be defective:—*Held*, that the defendant was not entitled to the costs of counsel attending on the motion merely to show that the notice was irregular: *Waller v. Claris*, 11 P.R. 130.

A counsel fee is not taxable unless notice of trial is served.

In estimating the amount of a counsel fee properly to be allowed, the taxing officer should take into consideration the importance of the case and the importance of the result to the parties. In forming his opinion he should always have regard to the difficulty of the case generally, and where there are difficult questions of law or fact involved, he should allow a liberal fee: *Carlisle v. Roblin*, 16 P.R. 328; *Rondot v. Monetary Times*, 18 P.R. 141.

It is becoming a settled rule in Ontario that the court will not interfere with the discretion of the taxing officer, either as

to the *quantum* or *quoties* of fees, unless the taxing officer omits to exercise any discretion or allows counsel fees upon a wrong principle, an appeal from his decision will be unsuccessful: *Connec v. N.A.R.*, 13 P.R. 433. See, however, *Rankin v. Mackenzie*, reported in 6 C.L.T. 502. This case was decided in the Manitoba Court, and it was held that the Master's decision as to the amount of a counsel fee could on proper material be overruled. See also *Brown v. Sewell*, 16 Ch.D. 517; *Talbot v. Poole*, 15 P.R. 274; *Fox v. Toronto*, 7 P.R. 157; *Oliver v. Robins*, 43 W.R. 137; *Monk v. Benjamin*, 13 P.R. 356; *Tait v. Burns*, VIII 19 (Manitoba).

Fee for consultation, between counsel prior to trial, is not taxable, but where solicitor employs outside counsel a fee for consultation between a solicitor and such counsel is properly allowed. See *Commissioners of Railways v. O'Rourke*, 75 L.T. 84.

Where the case has been entered for trial and all parties consent to have it withdrawn, and it is subsequently entered for trial at another sitting and disposed of, no counsel fee can be taxed on the first entry.

All necessary attendance and letters in connection with an application for increased counsel fees are taxable. Instructions to apply for increased counsel fees and preparing affidavits for use on the application are not properly taxable.

CORRESPONDENCE.

The costs of copy of the correspondence for use of counsel should be allowed on taxation, where it can be shown that the merits of the case turn on the correspondence: *Budgett v. Budgett*, 64 L.J. Ch. 309; 43 W.R.

A solicitor's letter, enclosing fee for service of summons, or for papers requiring to be served out of the jurisdiction, is properly taxable. The protection to sheriffs within the jurisdiction does not extend to a foreign sheriff.

All necessary letters, and attendances, in order to obtain the decision of a taxing officer at Toronto should be allowed. See *Ontario Tariff*, item 160.

A letter written by a solicitor, enclosing a writ of summons issued by him, to an agent for service is properly taxable.

A solicitor forwarding papers to be served is entitled to charge, either for the letter with, or for an attendance, but is not entitled to both. This is the case even though the papers should have been served by the sheriff.

The following letters written during the progress of a trial or an appeal, should be allowed:—

Letter to client advising of examination for discovery, when undertaking given to produce.

Letter to client advising of result, where judgment reserved at trial.

Letter to client advising of trial.

Letter to client advising of motion to change venue.

Letter to client advising that defendant has paid money into court.

Letter to client advising of result of appeal.

All necessary letters between a solicitor and his agent during the progress of the cause are taxable on a party and party taxation, whether the agent resides in the county town of the county in which the solicitors reside, or in another county, or in Toronto: *Agnew v. Plunkett*, 9 P.R. 456. See also *Yott v. Hubbs*, 11 C.L.T. 358.

By *Ontario Tariff, item 131*, the taxing officer may allow a reasonable sum, not, however, exceeding \$5, for correspondence during the progress of an appeal to the Court of Appeal.

CREDITORS' RELIEF ACT.

Creditors' Relief Act, R.S.O. ch. 78, sec. 23, sub-sec. 4, provides for solicitors' fees as follows:—

Where there is no contest, the sum of \$5 for fees of a solicitor (if employed), unless the amount of the claim is within the jurisdiction of the Division Court, in which case the sum of \$2 only is allowed.

The solicitor is only entitled to the costs mentioned in the above section and to disbursements. Where there is a contest such additional costs as the judge may allow can be taxed, according to the scale of the High Court, County Court or Division Court, according as the amount in dispute is within the jurisdiction of one or the other of these courts. Where the claim is not contested, the creditor is to file a certificate, under sec. 9 of the above Act, with the sheriff. Nothing extra can be charged for the certificate mentioned, and the clerk cannot endorse on it for fees, as he can on an execution.

CROWN COSTS, FOR OR AGAINST.

In case, in any action or other proceeding before any court or tribunal in Manitoba, by or on behalf of the Crown, against any corporation or person, in respect of any lands, tenements or hereditaments, or of any goods or chattels belonging to or accruing to the Crown, or standing or being in the name of His Majesty, or in respect of any sum of money due and owing to His Majesty by virtue of any vote of the Legislature for the service of the Crown, or by virtue of any statute relating to the public revenue, or in any manner whatsoever, judgment is given for the Crown, His Majesty's Attorney-General may recover costs in the same manner as, and under the same rules, regulations and provisions that apply to the payment or receipt of costs in proceedings between subject and subject. *Manitoba Rule 276. See Ontario Rule 239.*

If in an information, action, or other proceeding, judgment is given against the Crown the defendant is entitled to costs, subject to the same rules as though such proceeding had been between subject and subject. *Manitoba Rule 277. See Ontario Rule 240.*

In actions by or against the Crown the costs of all proceedings in reference to petition of right shall be in the discretion of the court or judge, and are recovered in the same way as in ordinary actions, except where costs are ordered to be paid by His Majesty.

Where there is not a judgment or order for costs to be paid by His Majesty, the judge may upon application in behalf of the party entitled to costs, after the lapse of fourteen days from the making, giving, or affirming of the judgment or order, certify to the Provincial Treasurer according to Form 190, and such certificate may be sent to or left at the office of the Provincial Treasurer. See *Attorney-General v. Williamson*, 60 L.T. 930; *Attorney-General v. Newcastle* (1897), 2 Q.B. 384.

DEBTORS (*Absconding*).

If at any time before the execution issues it appears, upon motion, that the defendant was not an absconding debtor at the time of obtaining the attaching order, he shall recover his costs of defence, to be deducted from the amount of the plaintiff's claim or judgment; and the plaintiff shall be entitled only to judgment or execution or the excess, if any; and if the taxed costs of the defendant are greater than the amount of the

plaintiff's claim or judgment, the defendant shall be entitled to an order for payment of the excess forthwith. *Ontario Rule 1066*. See *ABSCONDING DEBTORS* and cases cited thereunder.

(Debtor) Examination of Judgment.

The costs of the examination of a judgment debtor or other person liable to examination, and of any application for the attachment of debts, and of any proceedings arising from or incidental to, such application, shall be in the discretion of the court or a judge. *Ontario Rule 1139*. See *Popham v. Flynn*, 15 P.R. 286 and *Ginty v. Rich*, 7 P.R. 319.

DEFENDANTS (Costs Between Themselves).

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 shall not be necessary to order payment through the plaintiff. *Manitoba Rule 933*.

Where the costs of one defendant ought to be paid by another defendant, the court may order payment to be made by the one to the other directly. *Ontario Rule 1140*.

Costs, when to be paid by one defendant to another. 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. *British Columbia 808*.

Where co-defendant is an innocent party the other defendant is liable for his costs: *McLean v. Grant*, 20 Gr. 76. See also *Mitchell v. Vandusen*, 140 A.R. 517; *Berginann v. McMillan*, 17 Ch. D. 423.

DEFENDANTS SERVING.

Where two or more defendants defend by different solicitors under circumstances entitling them to but one set of costs, the taxing officer shall 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 shall allow but one defence and one set of costs. *Ontario Rule 1162*.

Costs of Defendants Appearing Severally by one Solicitor.

Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by or for two or more such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed. *British Columbia Rule 771.*

Defendants Improperly Serving only One Set of Costs Allowed.

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. *British Columbia Rule 809.*

Defendants whose defences are practically the same are not justified in serving their defences so as to entitle them to two bills of costs: *Bull v. West London*, 34 L.T. 674.

Where several defendants retain the same solicitor, each of them can only be charged with his proportion of the general costs of proceedings taken on behalf of all. *Ford, Ex parte Colquhoun, In re*, 23 L.J. Ch. 551.

See 18 C.L.J. 8; "It may be stated in general terms that defendant 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 interest need not join." See *Crawford v. Lundy*, 23 Gr. 251. An action which is tried against two or more defendants and judgment is given against all, a defendant who has put in a separate defence is alone liable for the costs occasioned thereby: *Stumm v. Dixon*, 22 Q.B.D. 99 and 529. Members of a partnership which has been dissolved are entitled to sever their defences: *Melbourne v. Toronto*, 13 P.R. 346; as to fraud as a ground for severing defences see *Connolly v. Hill*, 7 P.R. 441; as to defendants severing see *Peillon v. Brooking*, 4 L.T. 731; *Barrett v. Campbell*, 7 P.R.

150; *Connolly v. Hill*, 7 P.R. 441; *Meriden v. Braden*, 17 P.R. 77; *Lockard v. Waugh*, 17 P.R. 260; *Harbin v. Masterson* (1896), 1 Ch. 351; *Petrie v. Guelph Lumber Co.*, 10 P.R. 600. See SEVERING DEFENCES.

DEFENDANTS WITHDRAWING DEFENCE.

Where one of the defendants withdrawing defence, was ordered as a term of the withdrawal, to pay to the plaintiffs their costs of the action (so far as they were occasioned by the defendants' defence) down to the date of the application to withdraw, it was held that the effect of the order was to relieve the withdrawing defendant from the general costs of the action, and he was only liable for the increased costs over and above the general costs: *Real and Personal Advance Co. v. McCarthy*, 45 LT. 116. See *Ontario Rule 431*. See also *Williams v. Preston*, 20 Ch. D. 672.

DISALLOWING IN COURT OR CHAMBERS COSTS OF MATTERS UNNECESSARY, ETC.

The court or judge may at the hearing of a cause or matter, or upon any application or proceeding in any cause or matter in court or Chambers, and whether the same is objected to or not, direct the cost of any indorsement on a writ of summons, pleadings, summons, affidavits, evidence, notice requiring a statement of claim, notice to produce, admit, or cross examine witnesses, account statement, procuring discovery by interrogatories or order, application for time, bills of cost, service of notice of motion or summons, or other proceeding, or any part thereof which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, 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, vexatious, or to contain unnecessary matter, or to be of unnecessary length or caused by misconduct or negligence; and in such case the party where costs are so disallowed shall pay the costs occasioned thereby to other parties; and in any case where such question shall not have been raised before and dealt with by the court or judge, it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequence shall ensue as if he had been specially directed to do so. *British Columbia Rule 775*.

Taxing officer may set off costs or direct one party to pay before the other.

In any case in which, under the last preceding regulation, or any other Rule of court, or by the order or direction of a court or judge, or otherwise, 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 liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think 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 such officer may allow or certify the costs to be paid and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered. *British Columbia Rule 776.*

PARTY NOT INTERESTED APPEARING UNNECESSARILY DISALLOWED COSTS.

Where any party appears upon any application or proceeding in court or 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. *British Columbia Rule 777.* See UNNECESSARY PROCEEDINGS and cases cited thereunder.

DISBURSEMENTS.

The disbursements incurred 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 the same. *Ontario Rule 1142.*

Upon the taxation of the plaintiff's bill of costs, the usual affidavit of disbursements was made and filed, and the disbursements mentioned in the affidavit were accordingly allowed on taxation. The defendant afterwards discovered that the affidavit was false and that certain of the fees mentioned in the affidavit had not been paid, and made a motion to set aside the certificate of taxation and have the items which were not paid disallowed. It was held that the Master in Chambers or Judge in Chambers had no jurisdiction to entertain the motion, but on motion to a judge in court the items were disallowed: *Harding v. Knust*, 15 P.R. 80; *Hornick v. Romney*, 11 C.L.T. 329. See AFFIDAVITS and cases cited thereunder. See WITNESSES and cases cited thereunder.

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. *Manitoba Rule 934.*

Under an agreement between the defendants and their solicitor he was to be paid a fixed salary to cover all his professional services to the city, exclusive of counsel fees and other disbursements paid by him, but he was to have the right to costs from parties against whom the corporation should succeed, and be entitled only to disbursements when they should fail. In a case in which the defendants succeeded, judgment was entered against the plaintiff and the usual costs taxed. On motion for revision:—*Held* (Wilson, C.J., dissenting), following *Jarvis v. Great Western R.W. Co.*, 8 C.P. 280, that as under their agreement the defendants were not liable to pay the attorney the costs taxed except disbursements, all costs except disbursements must be disallowed. Wilson, C.J., thought *Jarvis v. Great Western R.W. Co.* not a satisfactory decision, and opposed to the later case of *Galloway v. Corporation of London*, L.R. 4 Eq. 90. *Stevenson v. City of Kingston*, 31 C.P. 333.

The cost of plans and maps used at the trial by the court and jury may be allowed: *Pilgrim v. Southampton and Dorchester R.W. Co.*, 8 C.B. 25. But see *McCannon v. Clarke*, 9 P.R. 959.

It must be shown, however, by an affidavit of disbursement that such map or plan used at the trial was necessary, and that such a map or plan was prepared or procured with a view to the trial of the cause. The amount paid for such map or plan must also be set out in the affidavit. See *Ontario Rule 1174*. See also *Batley v. Kynoch*, L.R. 19 Eq. 90. *Manitoba Rule 956* makes similar provisions for maps or plans used in the trial, and gives the taxing officer authority to make a reasonable allowance for same.

DISCONTINUANCE.

When an action is discontinued, the defendant should first tax his costs, and if not paid, he is entitled to enter judgment and enforce by execution. If, however, he enters a judgment dismissing the action, and for costs to be taxed in the first instance, he will be disallowed the costs of entering judgment: *Gage v. Campbell*, 4 C.L. Times 151. See *Ontario Rule 430*.

Leave to discontinue action will only be granted on the terms of paying costs: *The J. H. Henkes*, 12 P.D. 106.

As to discontinuance generally, see *Barry v. Hartley*, 15 P.R. 376; *Suckling v. Gabb*, 36 W.R. 175; *Robinson v. Chadwick*, 7 Ch. D. 878; *Musman v. Borat*, 40 W.R. 352.

DISCRETION AS TO COSTS.

See *Ontario Rule 1130*, and see COSTS and cases cited thereunder.

By the provisions of sec. 3 *Ontario Rule 1130*, in an action or issue tried by a jury, the costs shall follow the event unless the judge, before whom the action or issue is tried, in his discretion otherwise orders. In *Garnett v. Bradley*, 3 App. Cas. 944, it was decided by the House of Lords that in a slander action, where the plaintiff obtained a verdict, no matter how small, he is entitled to costs.

The plaintiff brought a County Court action against the defendant to recover \$140, balance alleged to be due from the defendant for the sale of a chattel. The defendant paid into court the sum of \$95 in full, which the plaintiff accepted in due course. On the application of the defendant, the judge of the County Court made a summary order allowing the defendant to set off his costs on the County Court scale, in excess of such costs as he would have incurred if the action had been brought in the Division Court against the costs of the plaintiff, and gave the defendant liberty to enter judgment and issue execution for the excess, if any, of the defendants over the above costs of the plaintiff.

It was held that the plaintiff was entitled to costs on the County Court scale irrespective of the amount paid into court and accepted by him in full of his claim. The plaintiff being entitled to his costs on the County Court scale by provision of Rule 425, they were not subject to the discretion of the judge, as Rule 425 is not qualified by Rule 1130. Under sec. 52 R.S.O. ch. 55 (The County Court Act), as the judge's order was in its nature final, an appeal would lie: *Babcock v. Standish*, 19 P.R. 195.

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. *Ontario Rule 1152*.

In an ejectment action, where the plaintiff claimed several parcels of land and established his title to same, and failed to do so to others, the judge at the trial ordered each party to pay his own costs. This order was set aside by the Court of Appeal on the ground that directing each party to pay his own costs was not an exercise or discretion in its legal sense. The court expressed its approval of the judgment of Sir George Jessell in *Cooper v. Whittingham*, C.D. 15, 504. The judge should have given judgment for the portion of land as to which he was successful, and judgment for the defendant for the balance with costs. The judgment would entitle the plaintiff to the costs of the cause, including the costs of proving his title to the land, as to which he succeeded, and the defendant only to the costs occasioned by the plaintiff having claimed more than he was able to prove his title to: *Jones v. Curling*, 13 Q.B.D. (C.A.) 262.

As to Discretion of Court as to Costs, Nova Scotia Rule Applicable, is as follows:—

Subject to the provisions of the Act and these Rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the court or judge: Provided that nothing herein contained shall deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules formerly acted upon in equity: Provided also that, where any action, cause, matter or issue is tried with a jury, the costs shall follow the event, unless the judge by whom such action, cause, matter or issue is tried, or the court, otherwise orders. (E. 976.)

In an action for damages for assault and negligence, brought in the High Court and tried with a jury, a verdict for \$110 damages was rendered. The trial judge directed judgment to be entered for that sum, with the County Court costs, and ordered that the defendant should have no right to the excess of his costs in the High Court over County Court costs in the matter provided for by Rule 1172. The trial judge's reasons for making the order preventing the set-off were (1) because the defendant had induced the plaintiff to go with him to his own physician after the assault complained of, promising to pay the bill, and had afterwards refused to perform his promise, and

(2) because the plaintiff might reasonably have expected the damages to have been allowed at more than \$200, and so was entitled to bring his action in the High Court.

Held, that neither of these reasons could be treated as "good cause" within the meaning of Rule 1170, and therefore, the costs should follow the event under Rule 1172: *McNair v. Boyd*, 14 P.R. 132, followed; *Baskerville v. Vose*, 15 P.R. 122.

By their statement of claim the plaintiffs alleged themselves to be creditors for wages of two of the defendants, and they sought relief against the third defendant only as having obtained certain assets from the other two, either fraudulently or upon a trust to pay the plaintiff's claims. In their reply they set up that they were creditors of the third defendant himself upon the ground that he was really the person who hired them. There was no subsequent pleading:—

Held, that the reply was a direct violation of Rule 419, and that the trial judge was within his right in refusing, in his discretion, to try until the issues were properly presented upon the pleadings, and in directing that the costs of the postponement should be borne by the plaintiffs.

No opinion expressed as to whether a Divisional Court had power to review such a ruling: *Hurd v. Bostwick*, 16 P.R. 121.

In a suit tried without a jury by a judge of the County Court for N. S. District No. 4 the only question in dispute was the settlement of mutual accounts. The learned judge found certain items in favour of each party, the final result being judgment for the defendant for balance found in his favour. No costs were given to either party, 1st, on the ground of the disputed items, and 2nd, on the ground that plaintiff had ample reason for instituting the proceeding, having been led by the defendant's conduct to believe there was a balance due him:—*Held* (Ritchie, J., and Graham, E. J., dissenting) that the reasons of the trial judge for withholding costs were reviewable on appeal. *Held*, also, that the case was one in which the ordinary rule should prevail, and that, having succeeded as to the balance of the account, was entitled to his costs: *Townshend v. Smith*, 32 N.S.R. 305.

Where on the trial of an action a non-suit is directed which is set aside and a new trial granted, and on the second trial the plaintiff has a verdict and judgment, the plaintiff is entitled to the costs of the first trial, and of the rule for a new trial as part of the costs which "follow the event." *Vide* the latter part of Ord. LV.: *Green v. Wright*, 2 (C.A.) C.P.D. 354; 46 L.J. (App.) C.P. 427; 36 L.T. 355; 25 W.R. 502.

The word "event" does not mean the event of the verdict, but the event of the trial; it means the finding and judgment: *Myers v. Defries*, 4 Ex.D. 176; 48 L.J. Ex. 446; 40 L.T. 795; 27 W.R. 791; *Siddons v. Lawrence*, 4 Ex.D. 176; *Collins v. Welch*, 5 (C. A.) C.P.D. 27; 49 L.J. (C. A.) C.P. 260; 41 L.T. 785; 28 W.R. 208; *Myers v. Defries*, 5 (C. A.) Ex.D. 180; 49 L.J. (App.) Ex. 266; 42 L.T. 137; 28 W.R. 406.

The words of Rule 1172 "the judge or court makes no order respecting the costs," do not confer any wholly discretionary powers on the judge, but must be read with Rule 1179 as referring to an order made "for good cause."

And, where in an action in a County Court for damages for bodily injuries sustained by the plaintiff through the alleged negligence of the defendant, the jury found for the plaintiff and assessed the damages at \$30, and added that the defendant should pay "the court expenses," and the judge made an order that the defendant should have full County Court costs, and that the defendant should not have the set-off provided by Rule 1172, because, in his opinion, the injury done to the plaintiff was attended by circumstances of great aggravation, and the jury ought to have given larger damages:—

Held, Osler, J. A., dissenting, that these were not circumstances which constituted "good cause" within the meaning of Rule 1170, for the very matters relied upon by the judge as "good cause" had been passed upon adversely by the jury, and, therefore, the costs should follow the event under Rule 1172: *Beckett v. Stiles*, 5 Times L.R. 88, followed; *McNair v. Boyd*, 14 P.R. 132.

In an action for seduction it appeared that the wrong complained of was partly attributable to the culpable conduct of the girl's parents, and the jury gave a verdict for the defendant, but declared that they desired him not to get the costs, whereupon judgment was directed to be entered for him without costs:—*Held*, that good cause was shown why costs should not be given to the defendant within Rule 428, which declares that where an action is tried by a jury the costs shall follow the event, unless upon application made at the court shall otherwise order: *Walmsley v. Mitchell*, 5 O.R. 427, C.P.D.

As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to solicitor and counsel, if any, in respect of the work to which

any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and cost of the proceedings and all other circumstances, and where a party is entitled to sign judgment for his costs the taxing officer in taxing the costs may allow a fixed sum for the costs of the judgments. *British Columbia Rule 789.*

The costs of and incidental to the proceedings in the Supreme Court of Judicature shall be in the discretion of the court or judge according to the provision of section 119 of the Judicature Act, ch. 51 R.S.O. 1897, which is as follows:—

Subject to rules of court and to the express provisions of any statute, the costs of, and incidental to, all proceeding in the Supreme Court of Judicature shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and to what extent such costs are to be paid.

The judge has no power to delegate his discretion as to costs to the taxing officer: *Lampton v. Parkinson*, 35 W.R. 545.

The costs of an interpleader issue disposed of in Chambers are in the discretion of the court: *Hartman v. Foster*, 8 Q.B.D. 82.

Section 119, R.S.O. 1897, ch. 51 (The Judicature Act) governs the costs of proceedings under *habeas corpus*. The costs are, therefore, in the discretion of the court or judge, and an order made in the discretion of the court under that section is not appealable: *Re Wetherall* (1901), O.L.R. Vol. 1, 542.

Where the material used to obtain an order are sufficient and justify the arrest, even although the defendant is ordered to be released from custody upon fresh affidavits, the judge has power to impose terms and may withhold costs: *Sullivan v. Allen* (1901), O.L.R. Vol. 1, 53.

The meaning and effect of the words "In the discretion of the court," has been the subject of controversy and judicial decision. The word discretion as used in Judicature Act and in the rules is to be understood in a judicial sense. Sir George Jessell, M.R., in *Cooper v. Whittingham*, C.D. 15, p. 504, laid down the law that "Where a plaintiff comes to enforce a legal right and there is no misconduct on his part, no omission, or neglect which would induce the court to deprive him of his costs, the court has no discretion and cannot deprive him of his costs."

This judgment was approved in *Jones v. Curling*, 13 Q.B.D. (C.A.) 262.

Actual misconduct on the plaintiff's part need not necessarily be shown in order to deprive him of his costs, and to award costs to the defendant if the circumstances of the case show that such a course is fair and reasonable: *Foster v. Farquhar* (1893), 1 Q.B. 564.

Matters Left to Taxing Officer's Discretion may be Referred to a Judge Summarily.

Where under this order any matter is left to the discretion of the taxing officer, such matter may, in case of any dispute arising with respect thereto, between the parties interested therein be summarily referred at the request of any of such parties, by the officer to a judge, whose decision thereon shall be final. *British Columbia Rule 801.*

In *Latour v. Smith*, 13 P.R. 214, Boyd, J., remarked, "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." So where a verdict is entered for the plaintiff generally this will not entitle him to the expenses of witnesses subpoenaed to prove a distinct part of his claim which he failed to establish at the trial: *Cox v. Peachy*, 2 M. & R. 420.

Where the object of bringing the action has been abandoned it is not proper to bring the action to trial or to serve a motion for judgment merely for the purpose of obtaining an adjudication as to the costs. The proper practice is to first offer to have the question disposed of in Chambers: *Morgan v. G. E. Railway Co.*, 1 H. & M. 78.

If the opposite party refuses to consent to have the costs disposed of by the Master in Chambers, the action must go to trial or a motion made for judgment: *Hunter v. Strathroy*, 18 P.R. 127; *Blakely v. Ingram*, 9 C.L.T. 143; *Dicks v. Yates*, 18 Ch. D. 77.

The discretion as to costs in an action tried with a jury is exercisable by the judge or court of the first instance only; the full court has no power to make an order thereon, except

on appeal upon the question, whether or not "good cause" has been shown for depriving the successful party of his costs: *Gibson v. Cook*, 5 B.C.R. 534; *Vedder v. Chadsey*, 1 B.C.R. 76.

An action by the bailiff of one Division Court against the bailiff of another Division Court to recover the proceeds of goods seized and sold by the latter, such goods being at the time of such seizure and sale already under seizure by the plaintiff upon the execution in his hands against the execution debtor, was tried before the judge of a County Court without a jury, who held that the plaintiff was entitled to recover, but, under the circumstances, deprived the plaintiff of his costs, and ordered that the defendant's costs of the action and the costs of the seizure and sale should be deducted from the amount of the judgment. On appeal from such exercise of discretion, the judge reversed the decision of the learned judge, and ordered judgment to be entered for the plaintiff with costs. Hagarty, C.J.O., reversed his opinion as to the existence of any right in any judge to make the defendant pay the costs of a plaintiff who had failed to establish a right to recover, pay the costs of the defendant. Per Patterson, J.A., Rule 428 (Con. Rule 1170), gives full discretion over the apportionment of costs, and in proper cases to deprive the successful party of costs, but does not extend to make any party, whether plaintiff or defendant, who is wholly successful in his action or defence, pay his defeated opponent's costs. Per Osler, J.A.—The jurisdiction in question is one which existed in the old Court of Chancery though the circumstances in which it was exercised were of a very special and unusual character: *Mitchell v. Vandusem*, 14 A.R. 517.

Plaintiff, as executor to E. M., brought an action against defendant, claiming damages for an alleged unlawful detention of the plaintiff's goods. Defendant pleaded a number of defences, and paid into court the sum of \$1, which he said was sufficient to satisfy plaintiff's claim. A motion was made on behalf of plaintiff at Chambers for an order that, notwithstanding the time limited for so doing had expired, plaintiff be at liberty within five days, or such other time as should be ordered, to file and deliver a reply accepting the sum of money out of court.

The application was refused with costs, on the ground that, although there was a technical right on the part of plaintiff to recover nominal damages, the action should not have been commenced for the value of the property, and, for this reason,

plaintiff should be refused assistance over the technical difficulty which stood in her way on account of her not having replied within the ordinary time.

Held, allowing plaintiff's appeal, that in case of a plea of payment of money into court to satisfy the claim of the plaintiff, whenever the plaintiff becomes ready to accept such sum, his right to amend so as to accept the sum paid in in full must be allowed, subject to such terms as the law requires.

Per Meager, J., dissenting. As the amendment sought did not go to the merits of any question to be tried, but affected the right to costs merely, the chamber judge had a discretion to grant or refuse the indulgence asked: *Miller v. Archibald*, 36 C.L.J. 683.

The costs of an application to extend the time for any proceeding shall be in the discretion of the taxing officer, unless the court or judge has specially directed how the costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary, and could not with due diligence have been avoided.

The costs of an application to extend time shall not be allowed in cases in which Rule 6 of order LV. applies, unless the party making such application has previously applied to the opposite party to consent, and he has not given a consent to a sufficient extension of time, or the taxing officer considers there was a good reason for applying to the other party; and in case the taxing officer does not allow the costs of such application to the court or a judge, and considers that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment or deal with such costs in the manner provided by regulation 14. See *Nova Scotia Rules*.

DITCHES AND WATERCOURSES ACT.

R.S.O. 1897 sec. 22, sub-sec. 7.

The judge on appeal may set aside or affirm the award and correct any errors therein. He may examine parties and witnesses on oath, and may inspect premises and may require an engineer to accompany him; and should the award be affirmed or altered the costs of appeal should be in his discretion, and, if set aside, he shall have power to provide for the payment of the costs of the award mentioned, and also the costs of

appeal, and may order the payment thereof by the parties to award, or any of them, as to him may seem just, and may fix the amount of such costs. The judge in fixing the amount to be paid for costs, under this Act, is practically unrestricted and can allow any amount he thinks reasonable.

There is no provision made for an appeal from his decision. Sub-sec. 2 of sec. 26 of the Act limits the amount to be paid by witnesses, however, and is as follows:—

The fees to be allowed to witnesses upon an appeal under this Act shall be upon the scale of fees allowed to witnesses in any action in the Division Court.

DOCUMENTS.

Either party may call upon the other party to admit any document saving all just exceptions. *Ontario Rule 527*. See ADMISSIONS and cases cited thereunder. No costs of procuring a document shall be allowed unless a notice to admit has been given (*Ontario Rule 527*), except when the omission to give notice is the saving of expense. *Ontario Rule 1150*. See ADMISSION and cases cited thereunder.

No allowances is to be made for any order for production or any notice of inspection under any rules relating to production and inspection of documents, 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 inspection. *Ontario Rule 1155*.

Costs not allowed in *Wicksteed v. Biggs*, 52 L.T., between party and party.

See INSPECTION and cases cited thereunder.

DOWER.

Where the defendant fails to appear in an action for dower, the plaintiff may sign judgment of seisin forthwith and sue out a writ of assignment of dower, but shall not, unless otherwise ordered by the court or judge, be entitled to costs. Where the defendant in a dower action, on motion for judgment by the plaintiff, alleged that they had always been ready and were ready to assign dower, judgment of seisin under *Ontario Rule 581* was granted, but no damages or costs: *Malone v. Malone*, 17 O.R. 101. See *Ontario Rules 581* and *177*, and see *Losee v. Armstrong*, 11 Gr. 517.

DRAINAGE ACTIONS.

Action brought in the High Court of Justice, in 1890, to recover damages caused to the plaintiff's land by reason of the negligent construction of certain drains by the defendants, and by reason of their omission to keep such drains in repair, and for a mandamus.

After judgment referring the action to a special referee, set aside by the Court of Appeal, 14 P.R. 429, an order was made under sec. 11 of the Drainage Trials Act, 1891, 54 Vict., ch. 51, referring the action to the Drainage Referee, who made a report in favour of the plaintiff assessing damages at over \$500 and allowing the plaintiff costs. He referred the taxation of the plaintiff's costs to the clerk of the County Court of the County of Kent, who taxed them upon the scale of the County Courts.

The plaintiff appealed from the taxation to a judge of the High Court in Chambers.

For the plaintiff it was contended that as the proceedings were begun by action to the High Court, and the drainage referee acquired his jurisdiction by an order of reference under sec. 11 of 54 Vict., ch. 51, and not by proceedings under secs. 5, 6, and 7, and as the amount recovered by the plaintiff was beyond the jurisdiction of the County Court, the costs should be on the scale of the High Court, relying on 55 Vict., ch. 57, sec. 6 (2), and 57 Vict., ch. 56, sec. 114.

For the defendants it was contended that no appeal lay from the taxation by the clerk of the County Court to a judge of this court, and that, at all events, the costs were properly taxed on the scale of the County Court in accordance with 54 Vict., ch. 51, sec. 24 (3), and 57 Vict., ch. 56, sec. 109, no other tariff having been framed.

Armour, C.J., held that the costs were properly taxed upon the County Court scale, no provision to the contrary having been made in the order of reference.

Appeal dismissed with costs: *Fewster v. Raleigh*, 31 C.L.J. 287.

Where actions begun in the High Court were referred at the trial to the drainage referee and upon appeal from his report an order was made by the Appellate Court for taxation and payment of costs of the action:—*Held*, that they were not costs coming within the provisions of sec. 24, sub-sec. 4, of the Drainage Trials Act, 1891, but were to be taxed in the usual way in which costs of actions are taxed, and subject to the same right of appeal: *Crooks v. Township of Ellice*; *Hiles v. Township of Ellice*, 31 C.L.J. 426.

In actions commenced in the High Court and referred, under the provisions of the Ontario Drainage Act, to the drainage referee, the costs are to be taxed in the same manner and subject to the same right of appeal as costs of an ordinary action: *Crooks v. Township of Ellice*, 16 P.R. 553. See SCALE OF COSTS and cases cited thereunder.

EVIDENCE.

The plaintiffs claimed a farm, a portion of the estate of their father, under an executory devise over to them in his will, after the life estate of their brother. The defendants were the executors of the will of the brother's grantee, and were in the possession of the farm, asserting that their grantor's estate was in fee. The plaintiffs claimed, in the alternative, as two of the heirs-at-law of their brother, upon the ground that the conveyance to the defendants' testator was void for mental incapacity and fraud. The plaintiffs succeeded upon their first contention and were awarded possession of the farm, subject to payment for the defendants' improvements, less the rents, received by them:—*Held*, that as the whole estate of the original testator was not before the court, nor the executors, nor all the persons representing that estate, it was impossible to give costs out of it in the ordinary sense, and an appeal lay from the judgment of the High Court ordering the costs to be paid out of the farm in question, which was wrong in principle. The costs should be disposed of in the manner mentioned in the judgment, as in an ordinary action for the recovery of land in which the plaintiffs had succeeded, subject to a claim for and a balance found due to the defendants for improvements under mistake of title: *Crawford v. Broddy*, 18 Ont. P.R. 233.

As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence and the attendance of witnesses are to be allowed. *Nova Scotia Rule*.

Where an action was referred and the defendant appealed from the report of the referee and the plaintiff also appealed after the defendant's appeal had been set down, both parties were dismissed with costs, it was held that the defendant was not entitled to tax as part of his costs of the plaintiff's appeal from the report the amount paid for a copy of the evidence taken before the referee, which was required by the defendant for his own appeal: *Dennison v. Woods*, 18 P.R. 320.

ENTRY FOR TRIAL

When a case is once entered for trial, even although the place of trial may be changed from the county in which it was entered to another county, no additional fee for the clerk or for the jury can be charged. Unless the case is withdrawn, it stands entered until it is tried without any additional fee. If, however, the record is withdrawn, this has the effect of forfeiting all fees paid.

Where the plaintiff obtained an order for leave to amend his statement of claim, and the same order also provided to have the case transferred from the County Court to the High Court, the case having been brought into the County Court by mistake, and nothing was said in the order as to costs in the event of the plaintiff succeeding in his action, he will not be entitled to costs of the order, as he cannot profit by his own error.

EXAMINATIONS FOR DISCOVERY.

The costs of every interlocutory *viva voce* examination and cross-examination shall be borne by the party who examines, unless it is otherwise ordered, as to the whole or part of the examination, in actions in the High Court by a judge of the High Court or by the senior taxing officer at Toronto on notice to the opposite party, and in actions in the County Court by a judge of that court.

The costs of obtaining the allowance of such costs as against the opposite party shall not be taxed between party and party unless so ordered by the judge or the senior taxing officer. *Rules 29th Sept. 1884, amended Ontario Rule 1136.*

The practice is to make an application to the trial judge at the trial for the costs of interlocutory examination.

If not then made the application can be made to the senior taxing officer if not so made, then to the judge who tried the action: *McClary v. Plunkett*, 16 P.R. 310.

Instructions for the examination of a party for discovery should always be allowed, also attending to bespeak and for copy of depositions, unless it can be shown that the copy was ordered at the time of the examination, in such a case the attending to bespeak would be properly disallowed and only one attendance of fifty cents allowed.

The taxing officer has no power to tax to the successful party the costs of an examination for discovery without an order of the court or judge allowing the costs of the examina-

tion or unless allowed by the senior taxing officer at Toronto. The senior taxing officer at Toronto has no power to award costs of an examination for discovery, except on an application to him by the successful party to the action on notice to the opposite side. Such application if not made to the senior taxing officer must be made to the judge who tried the action. See *McClary v. Plunkett*, 16 P.R. 310, cited above.

Costs of Preliminary Examinations, when Disallowed.

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. *British Columbia Rule 806.*

Where an examination is held under the provisions of R.S.O. ch. 147, sec. 34, being the Act Respecting Assignments and Preferences by Insolvent Persons, the fees payable to the examiner on such an examination are the same as for any ordinary examination in the High Court of Justice. See also secs. 172, 173, 174 and 175 Ontario Judicature Act, R.S.O. 1897, ch. 51.

Examinations for discovery in Manitoba are governed by the following rules:

Any party to an action or issue, whether plaintiff or defendant, or, in the case of a body corporate, any one who is or has been one of the officers of such body corporate, may without any special order for the purpose, be orally examined after the action is at issue or the order for issue is filed, and before the trial, touching the matters in question in the action, and upon his affidavit on production of documents, by any party adverse in point of interest, and may be compelled to attend and testify in the same manner, upon the same terms, and subject to the same rules of examination, as any witness, except as hereinafter provided. *Ontario Rule 487.*

A person for whose immediate benefit an action is prosecuted or defended is to be regarded as a party for the purpose of examination. *Ontario Rule 488.*

Whenever a party is entitled to examine another party he may procure an appointment therefor from the local Master, deputy clerk of the Crown and pleas, or a special examiner in the judicial district where the party to be examined resides, and the party to be examined, upon being served with a subpoena, and upon payment of the proper fees, shall attend thereon and submit to examination. *Ontario Rule 490.*

The party examining shall serve a copy of the appointment upon which the solicitor of the party to be examined, if he has a solicitor in the cause, at least forty-eight hours before the examination. *Ontario Rule 491.*

Upon application to the court or a judge, an order may be made for the examination of any party liable to be examined as aforesaid, before any other person or in any other judicial district than those before mentioned, and upon service of a copy of the appointment of the person before whom the examination is to take place and a copy of the order upon the party to be examined, and upon payment of the proper fees, he is to attend and submit to examination. A copy of the appointment shall be served upon the solicitor of the party at least forty-eight hours before the examination. *Ontario Rule 492.*

The party or person to be examined shall, if so required by notice, produce on the examination all books, papers and documents which he would be bound to produce at the trial under a *subpoena duces tecum*. *Ontario Rule 493.*

Examinations in Nova Scotia are governed by the following rules:—

The court or judge may, in any cause or matter where it appears necessary for the purposes of justice, make any order for the examination upon oath before the court or judge or any officer of the court, or any other person and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence thereon on such terms, if any, as the court or judge directs. (E. 487.)

Orders for a commission to examine witnesses shall be in the forms Nos. 33 and 34, appendix K, and the writing of commission shall be in the form No. 11 in appendix J, with such variations as circumstances require. (E. 488.)

If the court or a judge so orders, a request to examine witnesses shall be issued in lieu of a commission. Such order and request respectively shall be in the forms No. 34A and 34B in appendix K, with such variations as circumstances require. (E. 488A; E. R. S. C. Oct. 1884, r. 6.)

The court or a judge may in any cause or matter at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order, the production of which the court or judge thinks requisite: Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial. (E. 489.)

Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document, shall be deemed guilty of contempt of court, and may be dealt with accordingly. (E. 490.)

Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in court. (E. 491.)

Where any witness or person is ordered to be examined before any officer of the court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties. (E. 492.)

The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination. (E. 493.)

The depositions taken before an officer of the court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as think fit to attend. If the witness refuses to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there appears any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which are objected to shall be taken down by the

examiner in the depositions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question. (E. 494.)

EX-PARTE APPLICATION.

The Court has no authority to give costs against an absent party upon an *ex parte* application: *Cass v. Poyser*, 26 L.J. Ch. 93.

Costs should not be given against another party upon an *ex-parte* motion: *McLean v. Allen*, 14 P.R. 261.

All *ex parte* orders are *periculo petentis*: *Re McCarthy, Pepler & Co.*, 15 P.R. 261.

EXPENSE (*Neglect, etc., Causing Expense, How Dealt With*).

Where, in proceedings before the taxing officer, any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the taxing officer may direct such party or his solicitor to pay such costs as he may think proper, or deal with them under regulation. *British Columbia Rule 795*. See DISBURSEMENTS and cases cited thereunder. See UNNECESSARY PROCEEDING and cases cited thereunder.

EXECUTION.

Unless a stay of proceedings is ordered, a party entitled to costs can issue execution, as soon as the costs are taxed, and if he has obtained a verdict he is at liberty to issue execution for the amount of the verdict immediately, without waiting to tax the costs: *Clark v. Creighton*, 10 C.L.T. 324; 14 P.R. 34, which practically overrules *Coolidge v. Bank of Montreal*, 6 P.R. 73, on this point. As to the effect of R.S.O. ch. 203, sec. 141, see *Lount v. Canada Farmers' Insurance Co.*, 8 P.R. 333, and *Lawson v. Canada Farmers' Insurance Co.*, 9 P.R. 185.

EXPERT EVIDENCE.

The costs incurred by experts in order to qualify them to give evidence are not taxable as between party and party: *Re McGannon v. Clarke*, 9 P.R. 555.

The Master has no authority to employ experts in a case which has been referred to him, for the purpose of assisting him to come to a conclusion. The court alone has authority to

obtain such assistance. Where, however, the Master had, at the instance of the plaintiff, in an administration suit, and the creditors, consented to the employment of an expert, and the parties received the benefit of the expert's services without objection, the court refused to allow the costs incurred: *Re Robertson v. Robertson*, 24 Gr. 555.

The allowances in respect to fees to any accountants, merchants, engineers, actuaries, and other scientific persons to whom any question is referred, shall be regulated by the taxing officer, subject to the appeal to the court or judge, which decision shall be final. *British Columbia Rule 788*.

The *Nova Scotia Rule* dealing with this subject is as follows:—

The allowances in respect of fees to conveyancing counsel, and to any accountants, merchants, engineers, actuaries, and other scientific persons, to whom any question is referred, shall be regulated by the court or judge, whose decision shall be final.

The court may obtain the assistance of accountants, merchants, engineers, actuaries, or other scientific persons in such way as it sees fit the better to enable it to obtain the better matter of evidence in any cause or proceeding, and may act on the certificate of such persons. See *Ontario Rule 94*. *Manitoba Rules* make a similar provision. See *McGannon v. Clarke*, 9 P.R. 555; *Wright v. Collier*, 190 App. 298; *Attorney-General v. Gooderham*, 10 P.R. 259; *McKay v. Keefer*, 12 P.R. 256.

FEES.

Schedule of Fees, Appendix N. (British Columbia Rule 800.)

The fees, costs, and charges relating to all proceedings in any civil matter or action in the Supreme Court, as between party and party or solicitor and client, shall be allowed according to the schedule in Appendix N. hereto; and no other fees, costs, or charges shall be allowed. A solicitor may, however, contract with his client for a lump sum for costs; but the opposite party shall not be chargeable therewith, or with any other sum in lieu of the charges in the said schedule.

Tariff of Fees be Promulgated by Judges. (Manitoba Rule 986.)

The judge or a court, or a majority of them, of whom the Chief Justice shall be one, may promulgate a tariff of fees to be allowed to barristers, solicitors, sheriffs, and officers of the court. The said tariff, when approved by the Lieutenant-

Governor-in-Council, and printed in the *Manitoba Gazette*, shall be of the same force and effect as if incorporated in this Act. See *Ontario Rules 1198 and 1179* as to tariff of costs and disbursements in force in Ontario.

The *Nova Scotia Rules* re solicitors' costs are as follows:—

Solicitors and counsel shall be entitled to charge and be allowed the fees provided in the chapter "Of Costs and Fees," which shall also apply to the pending proceedings. *Nova Scotia Rule 20*.

FIATS.

Instructions to apply for increased counsel fees at trial, or for costs of an examination for discovery, and of costs of preparing affidavits to be used on the application will not be allowed on taxation. The necessary letters and attendances on an application for increased counsel fee are taxable. Affidavits used on the application for increased counsel fees are now deemed unnecessary and therefore not taxable as the proper officers have now instructions to indorse on the record full particulars of the trial, including the names of counsel engaged, number of witnesses sworn on each side and the time occupied by the trial.

FOLIO.

A folio is to comprise 100 words, every figure comprised in a column or authorized to be used being counted as a word. *British Columbia Rule 773*. Ontario, Manitoba and Nova Scotia have similar rules. In Ontario and Manitoba, however, no provision is made for a figure to count as one word.

In England a folio comprises 72 words, every figure comprised in a column or authorized to be used being counted as one word.

In counting figures in order to ascertain the number of folios the following rule has been adopted in Toronto and elsewhere: in Ontario, for example, \$5.00 would count as two words; 1901 as one word.

GARNISHEE.

The garnishee, upon complying with any order of the court to be made respecting the debts due him, shall be entitled to his costs as between solicitor and client. Such costs, if not ordered to be satisfied in any other way, shall be paid by the garnishing plaintiff. This rule shall not apply in case the garnishee unsuccessfully resists payment either in whole or in part, in which

case a judge shall deal with the costs. See *Ontario Rules 911 to 921*, inclusive, *British Columbia Rule 505*, and *Nova Scotia Rule 551*.

See ATTACHMENT and cases cited thereunder.

GROSS SUM IN LIEU OF TAXED COSTS.

Upon interlocutory application where the court or a judge shall think fit to award costs to any party the court or judge may by the order direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such sum in gross shall be paid. *British Columbia Rule 765*.

Where the court or a judge or officer exercises jurisdiction in Chambers or the Master deems it proper to award costs, 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. *Ontario Rule 1137*.

The court has no power to award a sum in gross in lieu of taxed costs if the sum awarded should exceed what could be properly taxed.

A sum in gross in lieu of taxed costs is usually allowed to creditors in administration proceedings. In case of a deficiency such costs are not entitled to be paid in priority. See *Re Aetna Insurance Co.*, 17 Gr. 160; *Canham v. Neale*, 26 Beav. 266, and also ADMINISTRATION ACTIONS and cases cited thereunder. In *Ryan v. Fish*, 4 O.R. 335, a sum in gross in lieu of taxed costs was awarded to the plaintiff in an action for dower. See DOWER and cases cited thereunder.

GUARDIAN.

Where the official guardian or other guardian of an infant, lunatic, or person of unsound mind, is entitled to costs, or is entitled to costs 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. *Ontario Rule 1138*. See *British Columbia Rule 760*. *Manitoba Rule 930*. See OFFICIAL GUARDIAN and cases cited thereunder. The *Nova Scotia Rule* is as follows:—

Where the court or judge appoints one of the solicitors of the court to be guardian *ad litem* of an infant or a person of unsound mind, the court or judge may direct that the costs to be incurred in the performance of the duties of such office shall be

borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in which such infant or person of unsound mind is interested, and may give directions for the payment or allowance of such costs as the justice and circumstances of the case require. (E. 988.) (*Nova Scotia Rule*.)

No matter what may be the result of the litigation the costs of the guardian *ad litem* are generally ordered to be paid. See *Lipsett v. Perdue*, 10 O.R. 575.

HABEAS CORPUS.

Sec. 119 R.S.O. 1897, ch. 51.

The Judicature Act governs the costs of proceedings under *habeas corpus*. The costs are therefore in the discretion of the court or judge, and an order made in the discretion of the court under that section is not appealable: *Re Wetherall* (1901), O.L.R., Vol. 1, 542.

Since the Judicature Act, the court has now jurisdiction to give to the successful party costs of the proceedings for a writ of *habeas corpus*: *Reg. v. Jones*, 63 L.J.Q.B. 656.

In the British Columbia Supreme Court Act, sec. 10, combined with Rule 751, the court has power to award costs upon a rule *nisi* for *habeas corpus*: *Re Quai Shing*, 6 B.C.R. 86.

The court has authority to award costs on an application for *habeas corpus*, but has always refused to exercise this authority except in extreme cases: *Re Murphy*, 28 N.S.R. 196; *London v. Westham* (1892), 2 Q.B. 173; *Regina v. London* (1894), 1 Q.B. 453; *Regina v. Jones* (1894), 2 Q.B. 382.

As to costs, where certiorari in aid of the writ of *habeas corpus* is applied, see CERTIORARI.

INFERIOR COURT ACTIONS BROUGHT IN HIGH COURT.

Where an action of the proper competence of a County Court is brought in the High Court, or an action of the proper competence of the Division Court is brought in the High Court or in the County Court, and the judge makes no order to the contrary, 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 entering judgment, be set off and be 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 to 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. *Ontario Rule 1132*. See *Manitoba Rule 928*. Since this rule came into force, a judgment awarding costs on the High Court scale, even though by consent, will not carry High Court costs unless the action was one which could not have been brought in an inferior court. See *Brown v. Hose*, 14 P.R. 3. See also *Brough v. Brantford*, 25 Gr. 43; *Holmes v. Bready*, 18 P.R. 79; *Dominion Bank v. Hefferman*, 11 P.R. 504.

"Taxable costs of defence" in this rule mean costs as between party and party. See *Talbot v. Poole*, 15 P.R. 274, cited above.

In *Holmes v. Bready*, 18 P.R. 79, cited above, the plaintiff at the trial was awarded costs in the County Court scale. The defendant appealed to the Divisional Court, and his appeal was dismissed with costs. The costs of the appeal *primâ facie* should be taxed upon the High Court scale.

Ontario Rule 1141 is as follows:—

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.

If a cause is removed from an inferior court having jurisdiction in the cause, the costs in the court below shall be costs in the cause, unless the court or a judge otherwise orders. (E. 978.) *Nova Scotia Rule*.

INJUNCTIONS.

A defendant is entitled, where an action is dismissed with costs, to tax the costs of unsuccessfully opposing the motion for an injunction unless deprived of them by the judgment. Where an interim injunction was made and the question of the costs of obtaining same were adjourned to the trial, and the action was dismissed with costs, it was held the costs of opposing the motion for the injunction should be allowed to defendant: *Gosnell v. Bishop*, 38 Chy. D. 385.

Where the plaintiff made an application for an interim injunction and the motion was dismissed, the proper practice is to leave the disposition of the costs to the trial judge. The costs of making the application and of opposing the application to abide by the event: *Carruthers v. Armour*, 7 Gr. 34.

Where, however, a party obtained an injunction *ex parte* by suppressing and concealing the true facts of the case, and the injunction, on the application of the defendant, was dissolved, the costs should be made payable forthwith.

In *Sklitzsky v. Cranston*, 22 O.R. 590, the plaintiff was ordered to pay the costs of an interim injunction obtained by him, because the facts proved at the trial showed no evidence of such immediate and serious damage as to justify the application. See also *Johnson v. Jenkins*, 13 C.L.T. 270.

Where an order is made continuing an injunction with costs this will carry, in the absence of any special direction to the contrary, the costs of an interim injunction previously obtained on an *ex parte* application: *Blakely v. Hall*, 56 L.T. 400. See also *Sonnenschein v. Barnard*, 57 L.T. 712.

IMPROPERLY INCURRED COSTS.

If, in any case, it appears to the court or a judge that costs have been improperly, or without any reasonable cause, incurred, or that by reason of any undue delay in proceeding under any judgment or order, or any misconduct or default of the solicitor, the costs properly incurred have, nevertheless, proved fruitless to the person incurring the same, the court or judge may call on the solicitor of the person by whom such costs have been incurred, to show why such costs should not be disallowed as between the solicitor and his client, and also, if the circumstances of the case require, why the solicitor should not repay to his client any costs which the client has been ordered to pay to any other person, and thereupon make such order as the justice of the case requires. The court or judge may refer the matter to the taxing master and may also appoint a solicitor to attend and take part in the inquiry. Such notice, if any, of the proceedings or order shall be given to the client in such manner as the court or judge directs. Any costs of the solicitor so appointed and attending shall be paid by such parties or out of such funds as the court or judge directs. (E. 986.) *Nova Scotia Rule*. See UNNECESSARY COSTS and cases cited thereunder.

INSPECTION OF DOCUMENTS.

As to inspection of documents under Order XXXI., Rule 15, no allowance is to be made for any notice or inspection unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection. *British Columbia Rule 774.*

As to inspection of documents under Order XXX., Rule 15, no allowance is to be made for any notice or inspection unless it is shown to the satisfaction of the taxing authority that there were good and sufficient reasons for giving such notice and making such inspection. *Nova Scotia Rule.*

Any allowance shall not be made for any order for production, or any notice of inspection, under any of the rules relating to the production and inspection of documents, 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: *Ontario Rule 1155.* See *Manitoba Rule 412*, to the same effect.

At the trial the defendant obtained an order for the inspection of a vein in the plaintiff's claim upon the statement made that the vein was a continuation of a vein, the apex of which was within the limits of their own claim. The plaintiff asked for an adjournment, with a view of inspecting their own property, and if possible, rebutting the defendant's claim, and an adjournment was allowed, but on terms, viz., That all costs occasioned thereby should be borne by the plaintiffs in any event. On appeal from the ruling it was held that such costs should abide the result of the issue to which the inspection related: *Iron Mask v. Centre Star*, 7 B.C.R. 66.

On a party and party taxation, the costs of inspection were disallowed where the taxing officer was satisfied that there were not good and sufficient reasons for making the inspection: *Brown v. Sewell*, 16 Ch. D. 517. See also *Baldwin v. Quinn*, 16 P.R. 248.

INSPECTOR'S COSTS.

Where the inspector under the Ontario Liquor License Act attends court as prosecutor or witness, and travels to attend such court a distance of more than three miles from his place of residence, he can recover as costs in the cause his railway fare, or hire of conveyance, as follows:—

1. In case he travels by rail or stage, the fare actually required to be paid by him.

2. If by a hired conveyance, the sum actually paid.
3. If in his own conveyance, 10 cents per mile one way.
4. To cover all other expenses, \$1.00 per day.

Generally, in cases of adjournment, at the instance of the defendant, similar additional allowance is to be made where the inspector is actually in attendance.

INSTRUCTIONS.

The following instructions should be allowed: Where there is a brief allowed, instructions for brief should also be allowed. Instructions for affidavits on production in ordinary cases should be allowed at \$1.00. Where the affidavit is special, \$2.00 should be allowed, in the discretion of the taxing officer. Instructions to sue, where defendant has appeared and judgment is obtained, on motion, the plaintiff is entitled to \$4.00 for instructions. Instructions to apply for an order to examine should be allowed at \$1.00. Instructions to examine either plaintiff or defendant for discovery, \$2.00: *Alexander v. School Trustees*, 11 P.R. 157.

The following instructions should not be allowed:

Instructions for orders to produce obtained on præcipe.

Instructions to apply for increased counsel fee.

Instructions to file *lis pendens*; this is covered by instructions to sue.

Instructions for brief is not allowed where the solicitor is acting on his own behalf.

Instructions for affidavit of disbursements should not be allowed, unless special.

No matter how many affidavits are used in supporting or opposing a motion only one instruction can be allowed if the affidavits used deal with the same subject matter, and are simply corroborative, but if they were each of sufficient importance and combine entirely different matters, separate instructions might properly be allowed for each affidavit. Instructions for pleadings in action and instructions for reasons for or against appeal are allowed but once during the course of the action: *Torrance v. Torrance*, 9 P.R. 271.

When a solicitor suing on his own behalf uses his partner's name as his solicitor no instructions are taxable. The same rule would apply if he sued *pro forma* in the name of any other solicitor.

Instruction for appeal was allowed at \$2 in *Barber v. Morton*, 2 C.L.T. 340.

INTEREST.

By section 116 of the Ontario Judicature Act it is provided that, unless otherwise ordered by the court, a verdict or judgment shall bear interest from the time of the rendering of the verdict, or of giving the judgment as the case may be, notwithstanding that the entry of judgment shall have been suspended by any proceeding in the action, whether in the court in which the action is pending or in appeal.

Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff or other officer or person to whom the writ is directed, to levy the money really due and payable and interest to be recovered under the judgment, stating the amount and also to levy interest thereon if interest to be recovered at the rate of 6 per centum per annum from the time judgment was entered. *Ontario Rule 869.*

In cases where there is an agreement between the parties that more than 6 per cent. interest shall be secured by the judgment, the indorsement may be to levy the amount so agreed. In the absence of any agreement operating subsequently to judgment, interest is limited to the legal rate 6 per cent., even though the part of the debt on which the judgment was recovered bore a higher rate: *Re European Central Railway Co.*, 4 Ch. D. 35.

The plaintiff obtained a verdict at the trial from the jury, but the trial judge dismissed the action. From the judgment dismissing the action the plaintiff appealed, and the full court allowed the plaintiff's appeal, and ordered that judgment be entered in plaintiff's favour for the amount of the verdict. It was also held that the plaintiff was entitled to interest from the date of the verdict: *Gordon v. City of Victoria*, 7 B.C.R. 329.

The interest which a verdict or judgment bears by virtue of R.S.O. ch. 44, sec. 88. is no part of the claim; and the question as to the scale upon which costs are to be taxed is to be determined by the amount of the verdict or judgment irrespective of such interest: *Malcolm v. Leys*, 15 P.R. 75, distinguished; *Sproule v. Wilson*, 15 P.R. 349.

If a demand for interest is made by the solicitor in writing, unless the bill is paid, interest may be properly allowed. The taxing officer has no power to allow interest unless the question of interest has been specially referred to him by the order of taxation: *Re McClive*, 9 P.R. 213. See *Archer v. Severn*, 12 P.R. 648.

A taxing officer has no power to charge a solicitor with interest upon moneys in his hand belonging to his client: *Re O'Donohue*, 12 P.R. 612.

The interest which a verdict or judgment bears by virtue of R.S.O. ch. 51, sec. 116, is no part of the claim. The question as to the scale upon which the costs are to be taxed is to be determined by the amount of the verdict or judgment irrespective of interest: *Sproule v. Wilson*, 15 P.R. 349; *Malcolm v. Leys*, 75, distinguished.

Interest on taxed costs commence to run from the date of the taxing officer's certificate: *Fox v. Charlton*, 6 W.R. 352.

The court will give interest on costs payable out of a fund which cannot be immediately realized: *Re Campbell*, 19 W.R. 427.

Where a solicitor engaged in various suits obtained payment out of court of a sum of money standing in trust in the cause, and retained it towards his costs, and upon a subsequent taxation of his bill it appeared that at the time he obtained payment of the money he had in fact been already overpaid. The court, however, refused on motion for that purpose to charge him with interest, the parties having made considerable delay before they taxed the costs, and there being no fraud or laches imputable to the solicitor: *Wright v. Southwood*, 1 Y. and J. 527.

A solicitor is not chargeable with interest on balances in his hands: *Re Savery*, 15 Beav. 58.

Interlocutory orders for costs bear interest. See *Taylor v. Roe*, 70 L.T. 232. See ch. 80, sec. 9, R.S.O.

As to interest generally see the following cases: *McLaren v. Canada Central*, 10 P.R. 349; *Woodruff v. Canada Guarantee Co.*, 8 P.R. 532; *Hope v. Beatty*, 7 P.R. 39; *Michie v. Reynolds*, 24 U.C. Q.B. 303; *Re McClive*, 9 P.R. 213.

Where bill of costs is not taxed interest cannot be recovered unless there is a special agreement with the client: *Cameron v. Heighs*, 14 P.R. 56; *Taylor v. Roe* (1894), 1 Ch. 413; *Archer v. Severn*, 12 P.R. 648.

The taxing officer has no power or authority to allow interest: *Blair v. Cordner*, 19 Q.B.D. 516. See also *Re Marsden*, 40 Ch. D. 475. See also *Re O'Donohue*, 12 P.R. 612.

See *British Columbia Rules 641, 642 and 643*, re interest. Also sec. 52 Queen's Bench Act, 1895, Manitoba; also *Nova Scotia Rules 770, 505 and 611*.

INTERLOCUTORY COSTS.

The court and every judge thereof, in so far as it or he may be able so to do without injustice, shall adopt and carry out the principle that no costs of any interlocutory motion before judgment or before an order to enter judgment is obtained, shall be allowed, unless in the opinion of the judge or officer making the same, or of the taxing officer, such order was necessary to the proper trial or disposition of the case, or to do justice between the parties and all costs of motions made before final judgment where costs are to be allowed, shall, unless otherwise ordered, be taxed at the taxation of the general costs of the cause, subject to all just rights of set-off. In case where an application is made which, though within the strict right of the applicant, is considered by the court or judge to be vexatious and unnecessary, costs may be given against the applicant.

No party shall be entitled to tax against the opposite party the costs of an examination for discovery except upon the fiat of a judge. Such fiat may be given at the trial by the judge before whom the case is tried, or by a judge in Chambers on application for that purpose upon notice to the opposite party; but no costs of obtaining such fiat shall be allowed. *Manitoba Rule 932.* See *Swindell v. Birmingham*, 3 Ch. D. 127.

Decisions of the Master in Chambers and Rose, J., 15 P.R. 269, refusing to order a set-off of certain interlocutory costs against the amount alleged to be due to the solicitors upon bills in course of taxation, affirmed on appeal:—

Held, that as the taxation had never been completed and the solicitors declined to proceed with it, they were not entitled to the set off.

If the taxation had been completed, the fact of the interlocutory costs being ordered to be paid forthwith after taxation would not have prevented their being ordered to be set-off; but it raised an inference that it was not intended that they should be set-off.

Whether the costs in question should be set-off, or not was in the Master's discretion, and, having regard to the fact that they had been assigned, and to the other circumstances before the court, it could not be said that an improper discretion had been exercised: *Re Clark and Holmes*, 16 P.R. 94.

Certain interlocutory orders awarded "costs to all parties out of the estate." At the hearing the parties settled the action, and a consent judgment was entered, which directed that "the

parties other than the official guardian do pay their own costs." The plaintiff, however, claimed the costs awarded by the interlocutory orders.

Held, reversing the ruling of the local Master at Woodstock, that the disposition of the costs made by the consent judgment must be taken to apply to all costs of the litigation, including those upon interlocutory motions, and that the plaintiffs were not entitled to tax the costs which they claimed: *Campbell v. Dunn*, 54 C.L.J. 742.

An appeal by the defendant Calvert from an order of Rose, J., in Chambers, allowing an appeal from the ruling of one of the taxing officers at Toronto, and directing a set-off of certain costs awarded to the appellant against the amount of the plaintiff's judgment debt and costs, notwithstanding the assertion of a lien by the solicitor for the appellant.

The plaintiff had recovered judgment in the High Court against two defendants for debt and costs. The plaintiff, after examining the defendant Calvert as a judgment debtor, made a motion for a receiver, which was dismissed with costs, and a motion to commit the defendant Calvert for refusal to answer and for making unsatisfactory answers upon his examination, which was also dismissed without costs. The plaintiff appealed to a Divisional Court from the orders dismissing these motions and his appeal was dismissed with costs. On taxation of the costs of this appeal the taxing officer was asked to set them off against the plaintiff's judgment debt and costs, but the defendant Calvert's solicitor asserting a lien on the costs awarded to him, the taxing officer refused to make the set-off.

The motion to Rose, J., was by way of appeal from the taxing officer's ruling, and also a substantive motion for an order directing a set-off.

Ontario Rule 1164 provides that "where a party entitled to receive costs is liable to pay costs to another party, the taxing officer may tax the costs such party is liable to pay and may adjust the same by deduction or set-off, or may delay the allowance of the costs such party is entitled to receive, until he has paid or rendered 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."

Ontario Rule 1165: "A set-off of damages or costs between parties shall not be allowed to the prejudice of the solicitor's

lien for costs in the particular action in which the set-off is sought; but interlocutory costs in the same action awarded to the adverse party may be deducted":—

Held, that the costs were interlocutory costs and a set-off was properly directed by the judge in Chambers, to whom an appeal lay from the taxing officer's ruling. Appeal dismissed with costs to be fixed by registrar: *Wright v. Calvert*, 34 C.L.J. 353.

The costs of a motion, and appeals following, to discharge the defendant out of custody under an order for arrest before judgment, are properly interlocutory costs, though partly incurred after judgment; and where such costs are awarded to the defendant they ought to be set off against the judgment which the plaintiff has obtained against the defendant in the action and which the defendant is unable to pay. As against such a set-off the defendant's solicitor has no lien on the costs which the plaintiff has been ordered to pay and such costs may be ordered to be set-off or deducted, as provided in Rule 1165. In this case the order allowing the defendant costs was not made until after judgment and therefore an application to the court for a discretion to set-off was necessary; had the order been made before judgment the taxing officer would have made the deduction: *Elgie v. Butt*, 18 P.R. 469.

In the course of a proceeding for the taxation, at the instance of the client, of the solicitor's bills of costs, there was several interlocutory applications and appeals by the solicitors which were dismissed with the costs to be paid by the solicitors forthwith:—*Held*, that the solicitors were not entitled to have these costs set-off against the amount of costs alleged to be due to them upon the bills then being taxed: *Re Clarke and Holmes*, 15 P.R. 269. See the next case cited.

Where, under the judgment in an action, the costs thereof are to be taxed to one party, and under interlocutory orders certain goods are payable in any event on the final taxation, the taxing officer should not close the taxation of costs of the action and certify the result until the interlocutory costs are taxed, unless there is reasonable delay in bringing in a bill of the latter costs: *Cousineau v. Park*, 15 P.R. 37. See also *Re Lewis*, 31 Ch.D. 623; *Blakely v. Latham*, 43 Ch.D. 23; *O'Donohue v. Bourne*, 27 S.C.R. 654; *Hunter v. Hunter*, 18 C.L.T. 114; *Bank of Toronto v. Kelly*, 17 P.R. 250; *Bull v. N. British*, 12 P.R. 284.

INTERPLEADER ACTIONS.

The court or judge who tries the issue may finally dispose of the interpleader proceedings including all costs not otherwise provided for. *Ontario Rule 1114*. See *British Columbia Rule 669*; *Manitoba Rule 970*.

Nova Scotia Rule re Interpleader is as follows:—

Where the execution creditor does not in due time, as directed by Rule 16, admit or dispute the title of the claimant to the goods or chattels, and the claimant does not withdraw his claim thereto by notice in writing to the sheriff or his officer, the sheriff may apply for an interpleader summons to be issued, and should the claimant withdraw his claim by notice in writing to the sheriff or his officer, or the execution creditor in like manner serve an admission of the title of the claimant prior to the return day of such summons, and at the same time give notice of such admission to the claimant, the judge may, in and for the purpose of the interpleader proceedings, make all such orders as to costs, fees, charges, and expenses, as are just and reasonable. (E. Or. 57, r. 17, E.R.S.C., 1889, r. 10.)

As to interpleader costs generally see *Grothe v. Peace*, 15 P.R. 432; *Gray v. Alexander*, 10 P.R. 358. In *McLaren v. Canada Central*, 10 P.R. 328. Each party was ordered to pay their own costs, and half of the costs of the sheriff: *Ontario Silver Co. v. Tasker*, 15 P.R. 180.

By *Ontario Rule 1120* where an issue is ordered, the costs of the sheriff is to be a first lien on the property exigible; without prejudicing said lien the sheriff may tax his costs and serve allocatur on each party. The successful party is generally liable to the sheriff for costs, but if case is settled between the parties the sheriff's costs shall be paid by the party by whom the execution was issued.

See *Manitoba Rules 915 and 916*. See *British Columbia Rules 667, 668 and 669*. See *Nova Scotia Rule 756*.

The court or judge may in or for the purposes of any interpleader proceeding respecting the satisfaction or payment of any lien or charges of the applicant, and as to costs, make any order as may be just and reasonable. See *Re Rothchild v. Morrison*, 63 L.T. 46. See also *Ontario Rules 1121 and 1122*.

The party moving for an interpleader order whether plaintiff or defendant, should, if resident outside the jurisdiction, give security for costs to the opposite party: *Swain v. Stoddard*, 12

P.R. 59, approved; *Belmonte v. Aynard*, 4 C.P.D. 352, distinguished; *Re Ancient Order of Foresters and Castner*, 14 P.R. 47. See *Knickerbocker v. Webster*, 17 P.R. 189.

Copy of the interpleader order for the taxing officer for use on taxation is allowable, but the copy of the interpleader order for sheriff cannot be taxed. A copy of the interpleader order for an execution creditor is allowable, but a copy of the interpleader order served on parties who have abandoned their claims cannot be taxed.

In an application for an interpleader order which was enlarged on several occasions, and nothing was said at the time of the enlargement as to costs, and the sheriff subsequently obtains an order giving him the costs of and incidental to the motion, under these circumstances, he would be entitled to the costs of the enlargement.

ISSUES—COSTS OF SEVERAL

When issues in fact and law are raised upon a claim or counter-claim, the costs of the several issues respectively, both in law and in fact, shall, unless otherwise ordered, follow the event. (E. 977.) *Nova Scotia Rule*.

By sub-sec. 3 of *Ontario Rule 1130*, where an action or issue is tried by a jury the costs shall follow the event unless the judge before whom the action or issue is tried in his discretion otherwise orders. The word event in this rule must be read distributively. See *Myers v. Defries*, 4 Ex. D. 180; *Lund v. Campbell*, 14 Q.B.D. 821, also *Ahrbecker v. Frost*, 17 Q.B.D. 606; *Bertram v. Massey*, 13 P.R. 184; *Copeland v. Blenheim*, 11 P.R. 54. See *British Columbia Rules 752 and 324, 325, 326 and 327*. See *Manitoba Rule 926*.

INVESTMENT OF MONEY.

A solicitor intrusted with money to invest did so on property of sufficient value, and his client, shortly after the loan, desired him to realize the amount advanced, which the solicitor endeavoured to do by getting the owner to effect another loan from a building society. He desired his client to release his mortgage for that purpose, undertaking to obtain security on chattel property for any deficiency before acting on the release. The society refused to advance more than \$800, which it was stipulated should be paid to the client, thus leaving a balance due to him of about \$150. The solicitor procured from the mortgagor

a chattel mortgage on cattle, etc., variously valued at from \$100 to \$130: such security being made out in the name of the client, and only requiring his affidavit of *bonâ fides* to have it registered. This the client refused to accept, and instituted proceedings against the solicitor for the surplus of his claim; and the judge of the County Court gave a verdict and judgment for \$177 against the latter. On appeal this court (Burton, J.A., dissenting), being of opinion that the plaintiff had of his own wrong lost the benefit of the chattel mortgage, reduced the judgment by \$117, thus limiting the verdict to \$60, with Division Court costs, but refused to either party costs of the appeal: *O'Callaghan v. Bergin*, 11 A.R. 594.

During the partnership the plaintiff, acting on R.'s advice, allowed him to invest moneys in the purchase of lands in Dakota, it being agreed that he was to pay her interest on the moneys so invested, and that any profits were to be divided between the plaintiff and R. W. had no knowledge of this transaction. The moneys so invested were lost:—*Held*, reversing the judgment of the Queen's Bench Division (15 O.R. 662) and affirming that of Boyd, C., at the trial, that this was a transaction clearly outside the scope of the partnership business, and that W. was not liable. See *Taylor v. Mayrath*, 10 O.R. 669.

R., a practising solicitor, was retained by the plaintiff to manage her business affairs, and he obtained from her and invested large sums of money in mortgage securities. A year afterwards R. entered into partnership with the defendant W., and the firm carried on business as solicitors and conveyancers, and had in their hands several estates to manage. It was agreed when this partnership was formed that W. should have no interest in the plaintiff's business, which continued to be managed entirely by R., but the entries in connection therewith were made in the books of the firm, moneys received on the plaintiff's account were deposited with the firm's moneys and from time to time re-invested by the firm, or paid to the plaintiff or to R. by cheque of the firm, and charges paid by borrowers went into the profits of the firm. Losses occurred owing to the insufficient value of some of the mortgaged properties:—*Held* (Burton, J.A., dissenting), affirming the judgment of the Queen's Bench Division (15 O.R. 662), and that of Boyd, C., at the trial, that under the circumstances, particularly because of the money having been actually received by the firm and again paid out by them to the borrowers, both partners

were liable for the negligence complained of. *Per* Hagarty, C.J.O.: The business being *prima facie* within the scope of the partnership business, W. was liable, and to escape liability he should, when the partnership was formed, have given notice to the plaintiff that he was not to be liable. *Per* Burton, J.A.: R. alone was retained by the plaintiff, and as it was a term of the partnership that W. was to have no duties cast upon him to give notice to her, any liability to her could arise only by estoppel, and there was nothing amounting to estoppel in this case: *Thompson v. Robinson*, 16 A.R. 175. See SOLICITOR AND CLIENT, and cases cited thereunder.

JOINDER.

It has been held that a joinder of issue is a pleading, but notwithstanding this decision instructions for joinder of issue cannot be taxed. See *Torrance v. Torrance*, 9 P.R. 271. Also *Norris v. Beazley*, 35 L.T. 845, where leave to rejoin was refused as unnecessary. *Evans v. Gann*, W.N. (1875), 199.

JUDGMENT DEBTOR.

The costs of the examination of a judgment debtor or other person liable to examination, and of any application for the attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the court or a judge. *Ontario Rule 1139*. See *Ginty v. Rich*, 7 P.R. 319, and *Popham v. Flynn*, 286, 15 P.R.

JUDGMENT WITHOUT TRIAL.

In every case where judgment is entered without trial, or the decision of a court or a judge or order as to the costs, and where the amount of or relief awarded by the 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 competence of the County or Division Court, then the taxation shall be on the scale of fees in such court. See *Ontario Rule 1133*. Where there has been a trial but no order has been made for costs. See *Andrews v. London*, 12 P.R. 44; *Brown v. Hose*, 14 P.R. 3; *Dale v. Weston*, 17 P.R. 523; *White v. Belfry*, 10 P.R. 64.

JUDGMENT ON CONFESSION OF DEFENCE.

See *Ontario Rule 295* and *Nova Scotia Rule 242*, and *Foster v. Gamgee*, 1 Q.B.D. 666; *Newington v. Levy*, 6 C.P. 180; *Ellis v. Monson*, 36 L.T. 385; *Beddall v. Maitland*, 17 Ch. D. 174; *Patterson v. Smith*, 14 P.R. 558. See also *Manitoba Rules 585 to 591* inclusive.

JUDGMENT FOR COSTS.

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 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. *Ontario Rule 1169*. See *British Columbia Rule 473*. See *Nova Scotia Rules 84* and *242*. See *Manitoba Rule 1169*.

JURY TRIALS.

By the provisions of sec. 3 *Ontario Rule 1130*, in action or issue tried by a jury, the costs shall follow the event unless the judge, before whom the action or issue is tried, in his discretion otherwise orders. In *Garnett v. Bradley*, 3 App. Cas. 944, it was decided by the House of Lords that in a slander action where the plaintiff obtained a verdict, no matter how small, he is entitled to costs. See DISCRETION AS TO COSTS, and cases cited thereunder.

JURY FEES.

Jury fees should be paid when the action is entered for trial. Where the action has been entered for trial, and is made a *ramanet*, no further fees are payable after the first entry.

In *Elliott v. Wilson*, reported in 6 *Manitoba L.R.* 63, the defendant gave notice for jury and paid the jury fee. A verdict was found in his favour, but on the application of the plaintiff a new trial was directed. The plaintiff gave notice of trial, but the officer refused to enter the record unless a further jury fee was paid, and the plaintiff moved to have the jury notice set aside. An order was made by Bain, J., setting the jury notice aside. On appeal from this order to the full court, the order was set aside upon the ground that a second payment could not have been exacted. As to jury recommendation in reference to costs, see *Farquhar v. Robertson*, 13 P.R. 156, and *Weaver v. Sawyer*, 16 O.A.R. 422.

JUSTICE OF THE PEACE.

Under Criminal Code 857 and 868 justices can award costs against the prosecutor where case dismissed, and under Criminal Code 867 against defendant if convicted. Sec. 4, ch. 90, R.S.O. makes provision for costs in cases under Ontario Statutes.

An order under 53 Vict., ch. 23, for security for costs in an action against a justice of the peace, should not limit a time within which security is to be given nor provide for dismissal of the action in default. The order should be simply "that the plaintiff do give security for the costs of the defendant to be incurred in the action." *Thompson v. Williamson*, 16 P.R. 368.

In an action against justices of the peace for false imprisonment, etc., the Divisional Court (10 O.R. 631) ordered judgment to be entered for the plaintiff for \$25, the damages assessed by the jury, leaving the costs to be taxed according to such scale and with such rights as to set-off as to the statute and rules of courts might direct. Upon appeal from taxation:—*Held*, that the action being within the proper competence of the Division Court (unless the defendant objected thereto) the plaintiff should have costs only on the scale applicable to that court, and the defendants should have their proper costs by way of deduction or set-off:—*Held*, also (Cameron, C.J., *dubitante*), that the effect of R.S.O. (1877) ch. 73, sec. 19, read in connection with sec. 12 of that Act, and with R.S.O. (1877), ch. 43, sec. 18, sub-sec. 5, R.S.O. (1877), ch. 47, sec. 53, sub-sec. 7, and R.S.O. (1877), ch. 50, sec. 347 is not to provide that the plaintiff should have costs on the Superior Court scale when his recovery is within the jurisdiction of an inferior court.

Per Cameron, C.J.—The case came under sec. 18, rather than sec. 19 of R.S.O. (1877), ch. 73: *Ireland v. Pitcher*, 11 P.R. 403, C.P.D.

Upon application under 53 Vict., ch. 23 (O.), for security for costs in actions against a justice of the peace, the rule should not be more, but rather less, onerous than in ordinary applications for security where the plaintiff is out of the country.

Section 2 of the Act provides that if it is to be shewn that the plaintiff is not possessed of property sufficient to answer the costs of the action:—

Held, that the court should be less exacting as to the character of the property where a person is a *bona fide* resident than in the ordinary case of a stranger who seeks to justify upon property within the jurisdiction. The test is, is it such property as would be forthcoming and available in execution?

And where the plaintiff had property, partly real and partly personal, to the value of \$800 over and above debts, incumbrances and exemptions, security for costs was not ordered: *Bready v. Robertson*, 14 P.R. 7.

In an action against a justice of the peace, for false arrest and imprisonment, it appeared that there was a valid warrant of commitment against the plaintiff in the county of O., which was, in the absence of the police magistrate, indorsed by the defendant for execution in the city of T., and under which the plaintiff was there arrested.

The plaintiff alleged that the arrest was illegal because the defendant's mandate was not actually indorsed upon the warrant, and because the defendant's authority was not shewn on the face of the mandate. It appeared, however, that the defendant's mandate was pasted or annexed to the warrant, and that the defendant had authority though it was not set out. It was admitted that the plaintiff was not possessed of property sufficient to answer costs:—

Held, that the defendant was entitled to security for costs under 53 Vict., ch. 23 (O).

Per Robertson and Meredith, JJ., that it was not intended by the statute that the merits of the action should be determined upon an application for security of costs: *Southwick v. Hare*, 15 P.R. 222.

LAND TITLES ACT.

Payment of costs under the Land Titles Act is regulated by the following sections of R.S.O. ch. 138.

The Master of Titles may order costs either as between party and party, or as between solicitor and client, to be paid by or to any person or party to any proceeding under this Act; and may give directions as to the funds out of which any costs shall be paid, regard being had to the following provisions, viz.:

That any applicant under this Act is liable *prima facie* to pay all costs, charges, and expenses incurred by or in consequence of his application, except in a case where parties object, whose rights are sufficiently secure without their appearance, or where any costs, charges, or expenses are incurred unnecessarily or improperly, and subject to this proviso, that any party aggrieved by any order of the Master of Titles under this section may appeal in the prescribed manner to the court, which may, with or without modification, annul or confirm the order of the Master.

If any person disobeys any order of the Master of Titles made in pursuance of the preceding section, the Master may certify such disobedience to the court and thereupon such person, subject to such right of appeal as aforesaid, may be punished by the court and execution issued to enforce the order in the same manner in all respects as if the order made by the Master were the order of the court.

It would appear under the above sections that an order for costs under the Land Titles Act can be enforced by execution, without any further order or direction being made by the judge or court.

Mr. Justice Meredith has held that it is not necessary to have the costs taxed under the order, or a report of the facts made by the Master under the direction of the court or judge, but that the costs can be enforced by the execution in the first instance.

A local Master of Titles has power by virtue of secs. 137 and 74 of the Land Titles Act, R.S.O. ch. 116, in ordering that a caution be vacated, to direct payment by the cautioner of costs as between solicitor and client; and by Rule 10 (2) of the Rules in the Schedule to the Act has power to give a special direction that costs as of a court motion may be taxed.

And where a Master in his discretion so ordered, a judge in Chambers refused to interfere, more especially as the appeal was late and could only be entertained as an indulgence: *Re Ross and Stobie*, 14 P.R. 241.

LETTERS.

A solicitor's letter, enclosing fee for service of summons, or other papers requiring to be served out of the jurisdiction, is properly taxable. The protection given a sheriff within the jurisdiction does not extend to a foreign sheriff.

All necessary letters of attendance in order to obtain the decision of the taxing officer at Toronto should be allowed. See *Tariff*, item 160.

A letter written by a solicitor enclosing a writ of summons issued by him to an agent for service is properly taxable.

A solicitor forwarding papers to be served is entitled to charge either for the letter or for an attendance, but is not entitled to both. This is the case even though the papers should have been served by the sheriff.

The following letters written during the progress of a trial, or an appeal, should be allowed :—

Letter to client advising of examination for discovery, when undertaking given to produce.

Letter to client advising of result, where judgment reserved at trial

Letter to client advising of trial.

Letter to client advising of motion to change venue.

Letter to client advising that defendant has paid money into court.

Letter to client advising of result of appeal.

All necessary letters between a solicitor and his agent during the progress of the cause are taxable on a party and party taxation whether the agent resides in the county town of the county in which the solicitors reside, or in another county, or in Toronto : *Agnew v. Plunkett*, 9 P.R. 456. See also *Yott v. Hubbs*, 11 C.L.T. 358 ; *McMicken v. Ontario Bank*, VIII. 513.

By Ontario Tariff, item 131, the taxing officer may allow a reasonable sum, not however exceeding \$5.00, for correspondence during the progress of an appeal to the Court of Appeal.

LETTERS ROGATORY.

Where it is necessary to obtain the assistance of a foreign court to compel the attendance of a witness before a commissioner appointed by a commission, an order can be obtained for the issue of letters rogatory, but such an order will not be made unless it is clearly established that they are necessary : *Ehrmann v. Ehrmann*, 75 L.T. 37 ; *Re Ex. Parte Smith*, 2 Cart. 330. See also the following statutes: Imperial Statutes, 48 and 49 Vict., ch. 74 ; R.S.O. ch. 73, sec. 52.

LIBEL.

The words "involves a criminal charge" in R.S.O. ch. 57, sec. 9, sub-sec. (1) (a), means "involves a charge that the plaintiff has been guilty of a criminal offence."

And where the words published by the defendants in their newspapers, alleged that the plaintiffs had tried to bribe aldermen by issuing them paid up stock in their company :—

Held, upon an application for security for costs under the above section, that the words did not involve a criminal charge, for a corporation cannot be charged criminally with a crime

involving malice or criminal intention of the offender: *Mayor, etc., of Manchester v. Williams* (1891), 1 Q.B. 94, followed; *Journal Printing Co. v. McLean*, 25 O.R. 509, distinguished.

And where the defendants by affidavit showed publication in good faith and other circumstances sufficient under the above section to entitle them to security for costs, and the case made was not displaced by the cross examination of the deponent on his affidavit, an order was made for such security: *Georgian Bay Ship Canal Co. v. World Newspaper Co.*, 16 P.R. 320.

The legislation, in ch. 57, sec. 9, R.S.O., as to security for costs in actions for libel contained in newspapers is unique, and the intention is to protect newspapers reasonably well conducted, with a view to the information of the public.

In a newspaper article published by the defendants the plaintiff was referred to as an "unmitigated scoundrel," and it was stated that he had endeavored to ruin his wife by inciting another person to commit adultery with her:—

Held, that this did not involve a criminal charge within the meaning of sec. 9.

The defendants did not contend that the grounds of action were trivial or frivolous, and it was conceded by the plaintiff that he had not sufficient property to answer the costs of the action.

The manager of the defendants swore to a belief in the substantial truth of what was published, and that it was so published in good faith and without malice or ill-will towards the plaintiff:—

Held, that under these circumstances an appeal from the discretion of a judge in Chambers in reversing a referee's decision and ordering security for costs should not prevail: *Bennett v. Empire Printing and Publishing Co.*, 16 P.R. 63.

Upon an application under 52 Vict., ch. 14, sec. 1, sub-sec. 3, for security for costs of an action for slander imputing unchastity to a female, the onus is on the defendant to show that the plaintiff has not sufficient property to answer the costs of the action, and to defeat such an application it is not necessary that the plaintiff should have property to the amount of \$500 over and above debts, incumbrances and exemptions.

And where it was shown that the plaintiff had property of the value of \$500 at least, and it was not shown that she had not property of much greater value, the application was refused: *Bready v. Robertson*, 14 P.R. 7, considered; *Feaster v. Cooney*, 15 P.R. 290.

The plaintiff was a candidate at an election of a member of the Legislative Assembly of Ontario, and brought this action in respect of several libels alleged to have been published by the defendant in his newspaper, some of them before the date of the writ for the election, and some after that date, but before the election.

Held, that the plaintiff was not a candidate for a public office in this Province within the meaning of R.S.O. ch. 57, sec. 5, sub-sec. (2) (a), before the date of the writ of the election; and that as to the libels alleged to have been published before that date, a notice before action under the statute was necessary; but the paragraphs of the statement of claim charging these libels could not, on the ground that the notice was not given, be struck out under Rule 387, nor the action as to them summarily dismissed; and as to the libels alleged to have been published after that date, security for costs could not be ordered under the statute, because the plaintiff was then a candidate for a public office within the meaning of sec. 5, sub-sec. (2) (a), and the statute did not apply, there having been no retraction: *Connie v. Wiedman*, 16 P.R. 239.

In an action of libel against the publishers and editor of a newspaper, the defence suggested by affidavits, filed upon an application under R.S.O. ch. 57, sec. 9, for security for costs, was that the statements complained of as defamatory did not refer to the plaintiff. The judge who heard an appeal from an order made by a Master for security being of opinion that upon the fair reading of the statements complained of they did refer to the plaintiff:—

Held, that it did not appear that the defendants had a good defence on the merits and that the statements complained of were published in good faith, and therefore the order should be set aside: *Swain v. Mail Printing Co.*, 16 P.R. 132 distinguished; *Lennox v. Starr Printing and Publishing Co.*, 16 P.R., 488.

On an application under R.S.O. ch. 57, sec. 9, for security for costs in an action of libel, the judge is not to try the merits of the action. If it appears on the affidavits filed by the defendant that there is a *prima facie* case of justification or privilege, and that the plaintiff is not possessed of property sufficient to answer costs, the statute is satisfied, and security should be ordered. It is not for the judge to pass upon disputed facts disclosed in conflicting affidavits filed against the application: *Swain v. Mail Printing Co.*, 16 P.R. 132, cited above.

Where an action of libel was brought by one Graeme complaining of statements published in a newspaper imputing a crime to one Graham, and it appeared that it was stated in an article published in the same newspaper, after the commencement of the action, that the person referred to in the former article was not the plaintiff, and there were other facts showing that the plaintiff was not the person referred to:—

Held, that the action was frivolous and the defendants were entitled to security for costs under R.S.O. ch. 57, sec. 9: *Graeme v. Globe Printing Co.*, 14 P.R. 72.

Upon an application under R.S.O. ch. 57, sec. 8, for security for costs in an action for libel in which the words complained of, published in the defendant's newspaper, accused the plaintiff of attempting blackmail:—

Held, that the words might bear such a meaning as to charge the indictable offence defined by sec. 406 of the Criminal Code, and the question whether they did so, when read with the context, was for the jury, and one which should not be determined upon this application; and the Master in Chambers having held that they "involved a criminal charge" his decision should not be interfered with.

An action cannot be considered "trivial or frivolous" within the meaning of sec. 9, R.S.O. ch. 57, merely because the existence of a good defence on the merits is shown by the defendant's affidavit, and not contravened by an affidavit of the plaintiff. The latter may properly consider that upon an application for security for costs a denial on oath of the truth of the charges against him is unnecessary: *Macdonald v. World Newspaper Co.*, 16 P.R. 324.

If the alleged libel involves a criminal charge the defendant is not entitled to security for costs unless he satisfies the court or judge that the action is trivial or frivolous or that the article was published in good faith, and that there was reasonable ground to believe that the publication was for the public benefit, and that the publication took place in mistake or misapprehension of the facts, and that there was an equally public retraction. See *Smith v. Stephenson*, 17 P.R. 374; *Georgian Bay Co. v. World Publishing Co.*, 16 P.R. 320.

In *Conmee v. Weidman*, 16 P.R. 329, it was held that where the libel complained of is against a candidate for a public office in Ontario the application by the defendant for security will not be entertained.

After action for libel brought the defendants published a retraction and apology which was accepted as satisfactory by the plaintiff. The defendants declined to pay the plaintiff's costs up to that time and the plaintiff proceeded to trial.

Held, Meredith, C.J., dissenting, that either party could, after the publication of the apology and its acceptance by the plaintiff, have moved in Chambers to have the question of costs disposed of, but neither party having moved that the plaintiff should have such costs only as he would have been entitled to had he so moved, and that the defendants should have no costs: *Knickerbocker v. Ratz*, 16 P.R. 191, followed; *Eastwood v. Henderson*, 33 Canada Law Journal 774.

In actions for libel, contained in a newspaper, by R.S.O. ch. 68, sec. 10 (now R.S.O. ch. 57), the defendants may at any time, after the plaintiffs have filed their statement of claim, make an application for security of costs. Defendant's affidavit, in support of the application, should shew the nature of the action, and defence should state that the plaintiff is not possessed of sufficient property to answer the costs of the action in case a verdict or judgment is given against him. It should also state that the defendants have a good defence on the merits, and that the statements complained of were published in good faith, and that the grounds of the action are trivial and frivolous. Where the defendant makes out a *prima facie* case for security, an order will be made. The judge is not to try the merits of the case: *Lennox v. Star*, 16 P.R. 488; *Bartram v. London Free Press*, 18 P.R. 11; *Swain v. Mail*, 16 P.R. 132; *Graeme v. Globe*, 14 P.R. 72.

LIEN FOR COSTS.

By *Ontario Rule 1165*, a set-off of damages or costs between parties shall not be allowed to the prejudice of the solicitor's lien for costs in the particular action in which the set-off is sought, but interlocutory costs in the same action awarded to the adverse party may be deducted. See *Manitoba Rule 949*, and *British Columbia Rule 761*. See CHARGING ORDER. See also *Blakey v. Lathan*, 41 Ch. D. 518; *Re Clarke*, 15 P.R. 269.

In *Turner v. Drew*, 17 P.R. 475, it was held that a set-off of damages and costs between the same parties in different actions cannot be ordered to the prejudice of a solicitor's lien. See also *Young v. Hobson*, 8 P.R. 253; *Cuthbert v. Commercial Traveller's Association*, 7 P.R. 255; *Ross v. McLay*, 7 P.R. 97; *Wardell v. Trenouth*, 8 P.R. 142; *Moody v. Bank of Commerce*, 14 P.R. 258; *Cock v. Bliss*, 1 R. & C. 299 (Nova Scotia).

In *Clark v. Eccles*, 3 Chy., Ch. 324, it was held that where an order changing solicitors during the progress of proceedings was obtained, that the fact did not deprive the original solicitor of his lien for costs on any fund afterwards recovered in the cause, but that the original solicitor was entitled to be paid his costs next after the costs of the solicitor who finished the suit. See also *Knight v. Gardiner*, 66 L.T. 646.

A solicitor's lien on the papers and documents of his client, which have come into his possession during the course of their business relations, cannot be actively enforced. The solicitor has a mere right to retain the documents in his possession until his costs are paid, but the lien is general and is not confined to the costs incurred in the particular business in which the documents came into the hands of the solicitor. The solicitor's lien on books, papers and documents in his possession is subject, however, to parties claiming same by a superior title to that of the client. See *Bozon v. Bolland*, 4 My. & Gr. 354; *Worrall v. Johnston*, 2 Jac. & W. 214; *Colmer v. Ede*, 19 W.R. 313; *Re Biggs*, 102 L.T. Jour. 364; *Francis v. Francis*, 5 P. M. & G. 108; *Ex parte Pulbrook*, L.R. 4 Chy. 627; *Bell v. Taylor*, 8 Sim. 216; *Re Mosely*, 15 W.R. 975; *Stedman v. Webb*, 4 My. & Gr. 346; *Young v. English*, 7 Beav. 10.

Solicitors have also a lien for their agency bills on papers placed in their hands by their principals. See *Re Attorney*, 7 P.R. 311.

As to a solicitor's lien on a fund recovered by his exertions, see *Lann v. Church*, 4 Mad. 491; *Wright v. Bell*, 24 S.C.R.; *Re Garland*, 53 L.T. 921. Unlike a lien upon papers and documents, a solicitor's lien upon a fund may be actively enforced. See *Bozon v. Bolland*, cited above, and *Wardell v. Trenouth*, 8 P.R. 142; *Re Harvaed Wilde v. Walford*, 51 L.T. 441.

It would appear that a client cannot transfer his right to a fund in court so as to defeat a solicitor's lien. See *Yemen v. Johnston*, 11 P.R. 231, as to the set-off between the parties. See *Ross v. McLay*, 7 P.R. 97; *Wardell v. Trenouth*, 8 P.R. 142; *Young v. Hobson*, 8 P.R. 253; *Flett v. Way*, 14 P.R. 312; *Brown v. Nelson*, 11 P.R. 121; *C.P.R. v. Grant*, 11 P.R. 208. See SOLICITOR, and SOLICITOR AND CLIENT, and cases cited thereunder. See COSTS, and cases cited thereunder.

As the result of extensive litigation between M. and The P. Gold Mining Co., in which W. was solicitor for the company,

costs became payable by M. to the company under a judgment of the Privy Council. For these costs a judgment was entered up against M., upon which the sum of \$1,455.14 was admitted to be due. Subsequently, O. and others having obtained judgment in this court against the company, obtained an *ex parte* garnishee order, attaching all debts due from M. to the company. After service of the order upon the garnishee W. served notice upon the garnishee, claiming a solicitor's lien on the judgment for costs, and, on application by the judgment creditors for an order for payment to them by the garnishee of the amount due by him to the judgment debtor, W. appeared and claimed to have a lien on the judgment for the costs, which were thereby recovered by the judgment debtor against the garnishee. He also applied to have an issue stated for trial. The learned judge who heard the application, having dismissed the claim made by W. and ordered payment by the garnishee to the judgment creditors of the balance due on the judgment, W. appealed:—

Held, per Meagher, J., Townshend, J., concurring, that W. had a lien upon the judgment for his costs which the court would protect. Also that the attaching creditor under the garnishee order took no more than the rights of the debtor and that as, in a contest between solicitor and client the court would assist the former, under the circumstances shewn, equally so must it aid him, where the contest was between the solicitor and the person who has succeeded to the rights of the client.

Held, also, that, under 63 O.R. 11, the existence of a solicitor's lien for costs is clearly recognized. *Held*, also, that the burden was upon respondent to shew clearly that the lien had been displaced. *Held*, also, that there is no substantial difference between the solicitor's rights here in cases where it is proper to protect him and those of a solicitor in England, who takes no effective proceedings to obtain a charging order under the statute until after the attaching order has been served: *Paigrove v. McMillan*, 31 N.S.R. 488.

After judgment had been recovered by the plaintiff against the defendants for \$550 damages and for costs, and while an appeal was pending, the plaintiff and defendants without the knowledge of the plaintiff's solicitors made an agreement for settlement of the action upon the plaintiff being taken into the defendants' employment and paid \$150 in full of damages and costs. The plaintiff's solicitors asserted a lien for their costs, which were unpaid, and gave notice thereof to the defendants before any money was actually paid over to the plaintiff:—

Held, that the compromise made was not a conclusive one, and the solicitors were therefore not entitled to an order upon the defendants for the payment of their costs, but such costs amounting to more than \$150 that they were entitled to have that sum for which the action was compromised and which was to be treated as the fruits of the litigation, paid over to them in respect of their lien. *Held*, also, that a question arising between the plaintiff and his solicitors, as to whether they were entitled to taxed costs as between solicitor and client, or to a percentage upon the amount recovered, could not be determined upon the motion to enforce payment, by the defendants of the plaintiff's solicitors' costs, but had to be determined in another proceeding before the determination of such motion: *Walker v. Gurney Tilden Co.*, 18 P.R. 274.

LIQUIDATOR.

Any person who is acting in a fiduciary capacity, who sues or defends in his own name, becomes liable to be ordered personally to pay costs of the opposite party: *Macdonald v. Balfour*, 20 A.R. 404; *Smith v. Williamson*, 13 P.R. 126.

Where an action is brought by a liquidator in the name of the company, and the liquidator is not himself a party, no order for costs can be made against him, and where a liquidator in good faith contests a claim, even though he fails in the litigation, he will not be held personally liable for the costs: *Ontario Forge Co. v. Comet Cycle Co.*, 17 P.R. 156; *Re Boulton* (1895), 1 Ch. D. 333. In *Boyd v. Dominion Cold Storage Co.*, 17 P.R. 468, it was held that where a liquidator of a company intervened and obtained leave to enter a defence to an action brought against the company he was personally liable to the plaintiff for the costs. See, however, *Re Boulton* (1895), 1 Ch. D. 333, cited above.

LIQUOR LICENSE ACT (ONTARIO).

Sec. 98 Liquor License Act, R.S.O. ch. 245, provides for costs as follows:

In all cases of convictions or orders made under this Act sec. 4 of The Ontario Summary Convictions' Act shall apply.

R.S.O. 1897, ch. 90, sec. 4:—(1) In all cases of summary conviction, or of orders made by a justice of the peace, police magistrate or stipendiary magistrate under this Act, the justice, police magistrate or stipendiary magistrate may, in his discre-

tion, award and order, in and by the conviction or order, that the defendant shall pay to the prosecutor or complainant such cost as to the justice, police magistrate or stipendiary magistrate seem reasonable in that behalf, the same not being inconsistent with the fees established by law to be taken on proceedings had by and before justices of the peace.

(2) In cases where the justice, police magistrate or stipendiary magistrate instead of convicting or making any order dismisses the information or complaint, he may in his discretion in and by the order of dismissal, award and order that the prosecutor or complainant shall pay to the defendant such cost as to the justice or police magistrate or stipendiary magistrate seem reasonable and are consistent with law.

(3) The sums so allowed for costs shall be specified in the conviction or order for dismissal, and shall be recoverable in the same manner and under the same warrants as a penalty, adjudged to be paid by the conviction or order is to be recovered, and such costs shall extend to and be deemed to include costs and charges of the distress, and also the costs and charges of the commitment, and conveying the defendant or the prosecutor, or the complainant, as the case may be, to prison, the amount thereof being ascertained and stated in such commitment.

(4) Where there is no penalty to be recovered or where the information or complaint is dismissed the costs shall be recoverable only by distress and sale of goods and chattels of the party.

Costs of commitment. Sub-sec. 2 of sec. 89, is as follows:—

The amount of the costs and charges of the commitment and conveying of the defendant to prison shall be ascertained and stated in the warrant of commitment.

MAINTENANCE.

The essence of the common law offence of maintenance consist in the criminal intention with which the act is done, so that when several persons against all of whom a general claim is to be made by a third party, enter into an agreement to uphold each other in resisting this claim, it is not an act of maintenance, if they do so in *bonâ fide*, though erroneous belief, that they are united in the defence of a common suit: *Findon v. Parker*, 12 L.J. Ex. 444.

The doctrine as to maintenance if several is not applicable to criminal proceedings: *Grant v. Thompson*, 72 L.T. 264; *Bradlaugh v. Newdigat*, 11 Q.B.D. 1.

It is a good defence to an action for maintenance that the defendant assisted a third party person from charitable motives, believing that he was a poor man oppressed by a rich man. It is not necessary that the defendant should have acted after full inquiries into the circumstances, but the defence will be equally valuable, even if the defendant, had he made full inquiries, would have ascertained that there was no reasonable or probable ground for the proceedings which he assisted: *Harris v. Drisco*, 34 W.R. 729.

In order to render an agreement void on the ground that it is in the nature of champerty it is not necessary that it should amount strictly to champerty as a punishable offence: *Rees v. Bernardy*, 65 L.J. Ch. 656.

An agreement may amount to champerty or maintenance or savor of champerty, if made between persons not standing in the relation of solicitor and client, or in any analagous relation, and such an agreement, if not amounting strictly to champerty or maintenance so as to constitute a punishable offence, may still be against the policy of the law, and such as a Court of Equity ought to discourage and relieve against: *Reynell v. Sprye*, 8 Hare 274, affirmed 21 L.J. Ch. 633. Where a client makes an application for the delivery of a bill, the solicitor as an answer cannot set up that the contract between himself and his client was illegal for champerty: *Re Thomas*, 20 L.T. 567.

MAPS.

The costs of plans and maps used at the trial by the court and jury may be allowed: *Pilgrim v. Southampton and Dorchester R.W. Co.*, 8 C.B. 25. But see *McGannon v. Clarke*, 9 P.R. 959.

It must be shown, however, by an affidavit of disbursement that such map or plan used at the trial was necessary, and that such a map or plan was prepared or procured with a view to the trial of the cause. The amount paid for such map or plan must also be set out in the affidavit. See *Ontario Rule 1174*. See also *Batley v. Kynoch*, L.R. 19 Eq. 90. *Manitoba Rule 956* makes similar provisions for maps or plans used at the trial, and gives the taxing officer authority to make a reasonable allowance for same. See PLANS, and cases cited thereunder.

MANDAMUS.

Under its general powers, the court has authority to grant the costs of an application for a mandamus. The costs are in the discretion of the judge, but are usually granted to the party succeeding: *Regina v. Surrey*, 14 Q.B. 684.

MASTER.

A local master, where a bill of costs taxed by him is subject to revision by one of the taxing officers in Toronto, shall not insert in his report any sum for costs until after the bill is revised. In case of urgency, however, a writ of execution may be issued to levy debt or costs on both upon the order of a judge. See *Ontario Rule 1168*.

The Master should state in his report any matters which would in any way effect the final disposition of the costs of the action. See *Clouster v. McLean*, 10 Gr. 575; *Lavin v. O'Neil*, 13 Gr. 179. As to Master's discretion as to costs: *Graham v. Robson*, 17 Gr. 318; *Kennedy v. Pingle*, 27 Gr. 305; *McCurdle v. Moore*, 2 Ont. Rep. 229. By *British Columbia Rule 637* a creditor who has come in and established his debt in the judge's chambers under any judgment or order shall be entitled to the costs of establishing the debt, and the sum to be allowed for such costs shall be fixed by the judge, unless he shall think fit to direct the taxation thereof, and the amount of such costs or the sum allowed in respect thereof shall be added to the debt so established.

Where any one of the persons constituting a class formed by a Master for representation in his office by one solicitor, under *Ontario Rule 662*, insists on being represented by a different solicitor, he shall personally pay the costs of his own solicitor of and relating to the proceedings before the Master, with respect to which the nomination of a solicitor has been made by the Master, 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 mentioned. *Ontario Rule 1148* gives the Master power to classify the different parties to the action according to their interests, and to appoint solicitors to represent the different classes. *British Columbia Rules 619, 620, 621 and 622*, give the judge a like authority. *Manitoba Rules 226, 232 and 239* make similar provisions.

The acts of a solicitor appointed to represent a class, under the provisions of said rules, binds all the individuals composing

that class, and unless they take the precaution to appoint a separate solicitor, they cannot repudiate the acts of the solicitor so appointed. See *Re McConnell*, 3 Chy. Ch. 423. See, however, *Re Drury Nickel Co.*, 16 P.R. 525.

A member of a class, after a solicitor has been appointed by the Master to represent the class, will not be entitled to costs out of the estate if he employs a separate solicitor: *Aetna Insurance Co.*, 17 Gr. 160. See also *Merchants' Bank v. Monteith*, 12 P.R. 288; *Gorham v. Gorham*, 17 Gr. 386.

See TAXATION, and cases cited thereunder. See APPEALS, and cases cited thereunder.

MECHANICS' LIEN ACT.

The costs of proving claim under the Mechanics' Lien Act are governed by the following sections of R.S.O. 1897, ch. 153.

No fees in stamps or money shall be payable to any judge or other officer in any action brought to realize a lien under this Act, nor any filing, order, record or judgment, or other proceeding in such action, excepting that every person, other than a wage-earner shall, on filing his statement of claim where he is a plaintiff, or on filing his claim where he is not a plaintiff, pay in stamps one dollar on every hundred dollars, or fraction of one hundred dollars of the amount of his claim up to one thousand dollars. 59 Vict., ch. 35, sec. 37; 60 Vict., ch. 24, sec. 8.

The costs of the action under this Act awarded by the judges or officer trying the action to the plaintiffs and successful lien holders shall not exceed in the aggregate an amount equal to twenty-five per cent. of the amount of the judgment besides actual disbursements, and shall be in addition to the amount of the judgment, and shall be apportioned and borne in such proportion as the judge or other officer who tries the action may direct. 59 Vict., ch. 35, sec. 41.

Where the costs are awarded against the plaintiff or other person claiming the lien, such costs shall not exceed an amount in the aggregate equal to the twenty-five per cent. of the claim of the plaintiff and other claimants, besides actual disbursements, and shall be apportioned and borne as the judge or said other officer may direct. 58 Vict., ch. 35, sec. 42.

In case the least expensive course is not taken by a plaintiff under this Act the costs allowed to the solicitor shall in no

case exceed what would have been incurred if the least expensive course had been taken. 59 Vict., ch. 35, sec. 43.

Where a lien is discharged or vacated under sec. 27 of this Act or where in an action judgment is given in favour of or against a claim for a lien, in addition to the costs of an action, the judge or other officer may allow a reasonable amount for costs of drawing and registering the lien or for vacating the registration of the lien. 60 Vict., ch. 24, sec. 11 (2).

The costs of and incidental to all applications and orders made under this Act and not otherwise provided for shall be in the discretion of the judge or officer to whom the application or order is made. 60 Vict., ch. 24, sec. 11 (1).

Under sec. 41 and sec. 42 of the Mechanics' and Wage-Earners' Lien Act, R.S.O. 1897, ch. 153, the costs of an action under the Act are limited to twenty-five per cent. of the judgment, besides actual cash disbursements. This provision does not apply to the costs of an appeal from the decision of the judge trying the action: *Gearing v. Robinson*, 19 P.R. 192.

The owner of a building can make payments before the expiry of the thirty days from the completion of the contract out of the twenty per cent. reserve required by the R.S.O. ch. 153, sec. 11, to persons entitled to liens, but he makes such payments at his own risk: *Torrance v. Catchley*, 31 O.R. 546.

In *Bobock v. Peters*, 13 Man. R. 124, counsel fees actually paid are to be included among the actual disbursements under the Act.

The costs of lien holders in establishing their liens is a first charge on the fund, and their costs, subsequent to judgment or reference, should be taxed upon the scale appropriate to the amount found due to each: *Hall v. Hogg*, 14 P.R. 45.

In an action by lien holders to enforce their lien under the Mechanic's Lien Act, it is necessary to make other holders of registered liens parties in the first instances in order to attack their status as lien holders, but this can be done where they are added as defendants in the Master's office.

The amount due from the owner to the contractor should be paid into court by the former, less his costs, which should be taxed as a stake holder watching the case.

The costs of lien holders establishing their liens should be paid as a first charge on the fund.

Consolidated Rule 826 (Ont.) is applicable to an appeal under sec. 39 (2) of the Mechanic's Lien Act, R.S.O. ch. 153, by

the respondent in the court below from the order of a Divisional Court reversing the judgment upon the trial of a mechanic's lien action, where the amount in question is more than \$100 and not more than \$200, and therefore security for the costs of such an appeal must be given unless otherwise ordered: *Sherlock v. Powell*, 18 Ont. P. R. 312.

A defence filed by a lien holder within the period mentioned in sec. 23 of R.S.O. ch. 126, in an action by the owner of the property to set aside the lien is not a "proceeding to realize the claim" within the meaning of that section, though a counterclaim if properly framed and a certificate thereof duly registered might be. *Per Osler, J.A.*; Observations as to the effect of registration of the lien: *McVean v. Tiffin*, 13 A.R. 1, considered.

Per MacLennan, J.A.: The defendant in this action having commenced an independent action and registered his lien within the prescribed period, his lien was preserved and the registration of the certificate in the other action enured to his benefit in the present one, though after judgment establishing his lien he abandoned the other proceedings: *McNamara v. Kirkland*, 18 A.R. 271.

See APPEALS, and cases cited thereunder.

MILEAGE.

Mileage shall not be taxed or allowed for the service of any writ, paper or other proceeding, without an affidavit stating the sum actually disbursed and paid for such mileage, and the name of the person to whom such payment has been made, and except in cases provided for under Rule 148, fees shall not be allowed for the mileage or service of writs of summons unless served and sworn to have been served by the sheriff, his deputy, or bailiff, being a literate person, or by the coroner when the sheriff is party to the action; or unless a return of the sheriff or coroner as the case may be, is endorsed thereon.

Ontario Rule 117.2. *Ontario Rule 148* provides for service by solicitor on sheriff's default.

An affidavit of disbursements shall be made by the solicitor in the case or matter or by some clerk having the management thereof or by the client. The affidavit shall set forth the sums paid to counsel, naming them, and for what service, the names of witnesses, their abode, the place at which they were subpoenaed, and the distance which each witness was necessarily obliged to travel in order to attend the trial, and the sums paid to them; and shall state that all such witnesses were necessary and

material for the client in the case or matter that they did attend, and that they did not attend as witness in any other cause or otherwise as the case may be, and the number of days which each witness was necessarily absent from home in order to attend such trial.

If a solicitor attends as a witness, it shall be stated whether or not he attended at the place of trial as solicitor or witness or any other cause, and whether or not he had any other business there. The day on which the trial took place shall be stated. *Ontario Rule, 1172.*

Where a trial is finished at three o'clock in the afternoon witnesses who were subpoenaed to give evidence at the trial will be allowed witness fees for the following day if it can be shown that they reasonably could not be expected to go home on the day the trial was finished: *Fryer v. Sturt*, 16 C.B. 218.

Service of all writs (which include subpoenas), by the decision in *Carty v. The City of London*, 13 P.R. 265, must be made by the sheriff, otherwise no fees for services can be taxed on a party and party taxation. See *Manitoba Rule 955.*

See COMMISSIONS, and as to the foreign commissions see also *Logan v. Kirk*, 14 P.R. 130.

In *Re Solicitor*, 9 C.L.T. 35, it was held that witness may be paid with the consent of the witness by set-off of a sum due by the witness to the party subpoenaing him. As to detaining a witness, see *Potter v. Rankin*, L.R. 5 C.P. 518.

A taxing officer has full power and authority to examine into the truth of affidavits of disbursements. See *Boulton v. Switzer*, 1 C.L. Cham. 83.

In no case is a mileage to be allowed unless the service were effected by the sheriff. See *Carty v. London*, 13 P.R. 285, also *McLean v. Evans*, 3 P.R. 154.

MISJOINDER.

Where one of two defendants at the trial is struck out of record, and the plaintiff obtains a verdict against the other, he is not entitled to the whole costs of the action against both. He must deduct a moiety of the costs of the defence: *Redway v. Webber*, 32 L.J. C.P. 84.

As to Misjoinder, see *D'Hormusjee & Co. and Isaacs & Co. v. Grey*, 52 L.T.Q.B. 192; *Gort v. Rowney*, 12 Q.B.D. 625; *Booth v. Briscoe*, 2 Q.B.D. 496; *Crerar v. Halbert*, 17 P.R. 283; *Re Butterfield*, 14 P.R. 567; *Mooney v. Joyce*, 17 P.R. 241; *Noyes v. Young*, 16 P.R. 254.

MODELS.

See MAPS, and cases cited thereunder.

MODERATION OF SOLICITORS' COSTS.

An appeal from the certificate of the Master in Ordinary, in which the Master held that under an order which directed him "to ascertain" and state what amount, if any, is properly chargeable by J. H. against the estate of T. W., deceased, in respect of legal proceedings taken by the said J. H. as administrator *pendente lite* of the said estate, in the courts or otherwise, the appeal of costs of the solicitor of the administrator should be taxed in order to ascertain the amount due. It was held that the Master was wrong, that the appeal should, if necessary, be subjected to moderation and not taxation. That moderation is a well-understood term, and is a more liberal proceeding than taxation even as between solicitor and client: *Beatty v. Haldan*, 6 O.R. 715.

Bills of costs for services rendered to an estate after a testator's death, down to the date of an order for the administration of the estate, were paid by the executor after the order and pending administration proceedings: — Held, that there could be no taxation of the bills as against the executor at the instance of creditors, but that the bills should be moderated. So far as the solicitors were concerned the payment by the executor was to be regarded as payment of the bills, and to obtain a taxation after payment a case would have to be made against the solicitors. Practically the moderation might be so conducted, if warranted by special circumstances, as to differ but little from a taxation: *Re Hague, Traders' Bank v. Murray*, 12 P.R. 119.

MOTION.

Unless otherwise ordered, if a party who serves a notice of motion does not set the motion down he shall be deemed to have abandoned the same, and the opposite party shall thereupon be entitled, without an order, to the costs of the motion. A party who serves a notice of motion may countermand the same by notice served on the opposite party, who shall thereupon be entitled to the costs of the motion.

In either of such cases the costs may be taxed, without an order, upon the production of the notice of motion served with an affidavit that the motion was not set down, or of the notice

of countermand served; and if the costs are not paid within four days from taxation, the party entitled thereto may on *proceipe* obtain an order for payment of the same, on filing the certificate of taxation and an affidavit of nonpayment of the costs. See *Ontario Rule*, 790.

This Rule supersedes decision in *Regina v. Armstrong*, 13 P.R. 306. See ABANDONED MOTIONS, and cases cited thereunder.

It is not necessary to ask for the costs of the motion in a notice of motion served. If the party moving is successful, the fact that he does not ask for the costs of the motion in the notice of motion served is no objection to granting the costs of the motion: *Ontario Bank v. Leacock*, 6 C.L. Times 355.

In *Re Peck and the Town of Galt*, 46 U.C.Q.B. 211, when a solicitor procures counsel to attend on a return of motion merely to show that the notice of motion is irregular (which was admitted) he is not entitled to tax against the opposite party the costs of the counsel attending: *Waller v. Claris*, 11 P.R. 130.

The plaintiff made a motion which was ordered to stand until the trial, and at the trial plaintiff obtained judgment with costs. Nothing was said in the judgment as to the costs of the motion, and it was held that the motion was successful and that the costs of it were costs in the cause: *Mounsey v. Lonsdale*, L.R. 6 Chy. 141.

In *Daubney v. Shuttleworth*, 1 Ex. D. 53, it was held that a party served with an invalid notice of motion, and accordingly not being bound to appear, is not entitled to costs if he does appear. See also *Fiskey v. Smith*, 3 Chy. ch. 74, and *Lucas v. Fraser*, 9 P.R. 319.

In the following cases, even though the court decided that it had no jurisdiction to entertain the motion, costs were given: *Powley v. Whitehead*, 16 U.C.Q.B. 589; *Brown v. Shaw*, 1 Ex. D. 425; *Great Northern v. Inett*, 2 Q.B.D. 284.

As to appeals to Court of Appeal, and the effect of default in giving security and setting down appeal, see *Ontario Rule* 821, also *D'Ivry v. World*, 17 P.R. 543.

Motions for time to deliver pleadings. See *Snider v. Snider*, 11 P.R. 34; *Meehan v. Meehan*, 14 L.R. Ir. 301.

By *Ontario Rule 1152* the costs of an application to extend the time for taking any proceeding shall, in the absence of an order by the court or judge directing by motion how they are to be paid, be in the discretion of the taxing officer.

Where the party served with a notice of motion attended on the return, but the party who served the motion did not appear, it was held that the party so appearing was entitled to an order for costs: *Barry v. Exchange*, 1 Q.B.D. 77. See also *Reg. v. Armstrong*, 13 P.R. 306.

By *Ontario Rule 1153* formal parties may, on service of notice of motion upon them, be tendered \$5 for costs; in the event of such parties unnecessarily appearing they will not be entitled to any additional costs: *Re Sutton*, 46 L.T. 74.

A plaintiff is entitled to costs of a motion for judgment in default of defence when the defence is filed after service of the notice of motion: *San Francisco v. Martin*, 5 B.C.R. 538.

MORTGAGE ACTIONS.

A mortgagee is entitled to add to his mortgagee debt, any costs occasioned by part of the property covered by the mortgage being expropriated under any statute, and can also tack to his mortgagee debt any costs incurred in protecting his security. *Rees v. The Metropolitan Board of Works*, 14 Ch. D. 372; *Wilkes v. Savnion*, 7 Ch. D. 188.

Under *Ontario Rule 1130* costs of proceedings in the Supreme Court are in the discretion of the court or judge subject to certain statutory provisions and to the provisions of the Judicature Act. The right of mortgagees to costs by sub-sec. 2 of said Rule are preserved, and they are placed in the same position as they were before the passing of the Judicature Act. See DISCRETION AS TO COSTS.

If a mortgagee sets up a wrong claim and refuses to be redeemed and thus forces the litigation, he may be ordered to pay costs: *Squire v. Pardoe*, 66 L.T. 243; *Queen's College v. Claxton*, 25 O.R. 282; *Stark v. Reid*, 26 O.R. 256.

A mortgagee, selling under a power of sale in his mortgage, or legally enforcing his right by action, is entitled to the costs properly and reasonably incurred. Where the mortgagee incurs costs in litigation which result in a substantial benefit to the estate, or security, he is entitled to add the costs so incurred, to his mortgage debt. It would appear, however, from the decision in *Wells v. Trust and Loan Co.*, 9 O.R. 170, that the mortgagee is not entitled to add the costs of litigation to his mortgage debt, unless he is successful.

The mortgagee is entitled to add the costs of an abortive sale to his debt and deduct same from the proceeds in his hands, or add them to his mortgage debt: *Farrer v. Lacy*, L.R. 31 Ch. D. 42.

A mortgagee, who is also solicitor, taking legal proceedings in person to recover his mortgage debt, is not, if the mortgagor redeems, entitled to charge the mortgagor his costs, he can only charge his disbursements: *Stone v. Lickorish* (1891), 2 Ch. D. 363; *Field v. Hopkins*, 62 L.T. 102.

Where he acts as solicitor for his co-mortgagee who is not a solicitor, he cannot recover costs: *Re Doody Hibber v. Lloyd*, 67 L.T. 650. As to costs, where a solicitor mortgagee is also trustee, see *Sclator v. Colton*, 29 L.T.O.S. 309, where it was held that a solicitor mortgagee was not entitled to costs. See, however, *Re Donaldson*, 51 L.T. 622.

As to costs for which a mortgagor is liable for, see *Re Griffith*, 50 L.T. 434.

A mortgagee cannot charge for his personal services unless there is a special agreement relating thereto: *Leith v. Irvine*, 1 M. & K. 277; *Hamilton v. Hockmore*, 1 Vern. 316; *Godfrey v. Watson*, 3 Atk. 518. As to costs where there is a special agreement, see *Barrett v. Hardley*, L.R. 2 Eq. 789; *Union Bank v. Ingram*, 16 Ch. D. 53.

In order to charge the mortgaged property with sums paid for insurance against loss by fire, there must be a special contract to that effect: *Brook v. Stone*, 13 W.R. 401; *Russell v. Robertson*, 1 Chy. Ch. 72; *Bethune v. Calcutt*, 3 Gr. 648.

Defendant, who was desirous of purchasing from C. land of which C. was the owner, subject to a mortgage for \$1,000 held by F., was referred by C. to M. as his solicitor, through whom the negotiations were completed. Defendant paid to M. the sum of \$1,000, which represented the whole price of the property, including the amount of the mortgage held by F. M. absconded from the province without having paid over to F. the amount due her. The evidence showed that F. executed a release of the mortgage and delivered it to E. C., with instructions not to allow it to get out of her hands until she received the money, and that E. C. placed the release for a time in the hands of M., to whom she communicated her instructions, and that the release was finally returned to E. C. by M. It appeared, however, that M. was never employed in any capacity by F., and that F. was not aware that the release was in his hands.

In an action by plaintiff, as executor of F., for the foreclosure of the mortgage, it was held that the plaintiff was entitled to the foreclosure sought. *Held*, also, that the plaintiff was not estopped by statements made by E. C. to defendant after the payment of the money by defendant to M., from which it was claimed defendant was led to believe that F. had been aware that the money had been paid over to M., and that she looked to him for payment, it not appearing that E. C. made the statements in question, intending that the plaintiff should act upon them, or that the statements were of such a character that any man of ordinary intelligence would be likely to believe them to be true, and that they were meant to be acted upon. *Held*, further, that the plaintiff could not be estopped from showing the real facts by other statements made by E. C. to a third party, and, without authority, repeated to defendant. *Ross v. Sutherland*, 32 N.S.R. 243.

The *onus* of showing that a solicitor, who is in possession of a mortgage and collects the interest, has authority also to collect the principal, is upon the mortgagor, and unless this *onus* is clearly discharged, the mortgagor and not the mortgagee must bear the loss arising from the solicitor's misappropriation of the funds: *In re Tracy, Scully v. Tracy*, 21 A.R. 454.

Mortgagees, after the exercise of the power of sale in their mortgage, claimed that \$182.61 was still due to them, but an account being taken, \$20.07 was found due to the mortgagor:—*Held*, that, laying aside the question of the whole amount of the mortgage money (\$6,705), the amount involved was \$202.68, and, therefore, the case was not within Rule 515 Ontario Judicature Act (C.S.U.C. ch. 15, sec. 34, sub-sec. 8). See *Consolidated Rule 1219*. And the costs were properly taxed on the higher scale: *Morton v. Hamilton Provident and Loan Society*, 10 P.R. 636; *Proudfoot* affirmed, 11 P.R. 82.

After a mortgage sale the first mortgagee paid the surplus proceeds of sale (\$162) into court. The third mortgagee petitioned for payment out to him of the \$162, alleging that the second mortgage was valid, and that a much larger amount than \$162 was due upon it. The claimant of the fund lived in three different counties. An order made on further directions gave the second mortgagee the costs of the petition and reference:—*Held*, that what was in contest was the whole amount represented by the second mortgage, and that the subject matter thus involved exceeded the limit of the former equitable jurisdiction of the County Court, and, therefore, and also

because the different respondents resided in different counties and the money in question was in court in a third county, the taxing officer was right in taxing costs upon the higher scale: *Re Lyons*, 10 P.R. 150.

Where the 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, was 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 O.R. 413.

The defendants before action tendered, with the amount due on the first mortgage, an assignment thereof, which the plaintiffs, being mortgagees in possession, were not bound, and declined, to give under R.S.O. ch. 102, sec. 2, and subsequently, but without tender, the defendants offered to make reconveyance:—*Held*, that the plaintiffs' claim to consolidate was not misconduct so as to deprive them of their costs of the action. Decision of Street, J., varied on the question of costs: *Stark v. Reid*, 26 O.R. 257.

NEXT FRIEND.

Upon application to the court therefor, the next friend of an infant plaintiff may be allowed to withdraw upon such terms as the circumstances of the case and the welfare of the infant may require.

Solicitors began an action in the name of an infant as plaintiff by her mother as next friend, with the consent of the latter. After the action had been some time in progress the mother wrote a letter to the solicitors revoking the authority to use her name, to which they replied that proceedings would not be stayed unless she paid costs up to date, and that if she did not do so they would assume that she intended them to continue the action. She took no notice of this and they went on with some proceedings, whereupon the defendant, instructed by the mother, moved to dismiss the action on the ground that it was being prosecuted without authority, and asked for costs against the solicitors:—*Held*, in staying the proceedings, that there was nothing to prevent the mother from renouncing her character of next friend and withdrawing from the litigation, subject to her remaining amenable to the jurisdiction of the court as to

liability for costs theretofore incurred. As to costs:—*Held*, that the court reaches the solicitors of a plaintiff directly for the benefit of the defendant only where the plaintiff, as client, has a right to be recouped by the solicitor, and to the extent of that recoupment. The next friend here was liable to the solicitor for costs up to her letter, and the solicitor was liable to the next friend for costs subsequent thereto; and as the former costs exceeded the latter, and as, between the next friend and the defendant, the former was liable for costs so long as she did not make a direct application against the solicitors, no order could be made in favour of the defendant; but the next friend was entitled to be indemnified by the solicitors for costs incurred after her letter. *Held*, also, that it was competent for the defendant to move to stay the proceedings, although the normal practice is for the next friend to move: *Taylor v. Wood*, 14 P.R. 449.

The general rule is that the next friend of an infant suing, or defending an action, on the infant's behalf is liable for costs and may receive costs. He is exactly in the same position as any other litigant, except that he can claim indemnity out of the infant's estate: *Smith v. Mason*, 17 P.R. 444. See also *Dament v. Hennell*, 33 Ch. D. 224; *Cottingham v. Cottingham*, 11 P.R. 13.

Where necessary, if a next friend is not appointed in a reasonable time a motion can be made to limit the time, and in default the action is liable to be dismissed with costs. See *Grant v. Winchester*, 6 P.R. 56; *Pruyn v. Soby*, 7 P.R. 44; *Webster v. Leys*, 10 P.R. 86; *Mallory v. Mallory*, 7 P.R. 446.

NEW TRIAL.

By *Ontario Rule 638*, any order obtained on condition is deemed to be abandoned so far as beneficial to the party obtaining the same unless the condition is performed. Under the provisions of a former *Ontario Rule 794*, an application was necessary. See *Kelly v. Wade*, 14 P.R. 66, where the plaintiff in an action for tort recovered a verdict, and the defendant made a motion for a new trial, which was granted in June, 1889. The plaintiff died in the spring of 1890. In December, 1890, the defendant made an application to issue the order, and it was held that the delay was immaterial, and afforded no evidence of an intention to abandon it. See also *Carroll v. Booth*, 11 C.L.T. 84; *Stacey v. McIntyre*, 5 P.R. 256; *Stock v. Shewan*, 18 C.P. 185.

The costs of an application for a new trial and of the former trial are in the discretion of the judge. In *Mills v. Hamilton*, 17 P.R. 74, a new trial was granted on the ground that the trial judge improperly non-suited the plaintiff. The defendant was also ordered to pay the costs. See *McLeod v. Boulton*, 2 U.C.Q.B. 44, where a new trial was granted without costs. The new trial was occasioned on account of a misunderstanding between the counsel engaged.

NO ORDER AS TO COSTS.

Where the court makes "no order for costs," such a jurisdiction is final. See *Purcell v. Bergin*, 16 P.R. 301; *Re Cassie*, 17 P.R. 402; *Re Hodgkinson*, 72 L.T. 617.

NON-PAYMENT OF COSTS.

Where costs have been ordered to be paid, the party who should pay the costs is liable to have his action stayed until the costs are paid: *Morton v. Palmer*, 9 Q.B.D. 89; *Wright v. Wright*, 12 P.R. 42; *Graham v. Sutton*, 77 L.T. 209; *Richards v. Howell*, W.N. (1883), 159; *Kevers v. Mitchell*, W.N. (1876), 53.

NONSUIT.

A judgment granting a nonsuit, unless otherwise directed, it shall have the same effect as a judgment upon the merits for the defendant, and it may be pleaded as a bar to a fresh action for the same cause: *Bywater v. Dunne*, 10 L.R. Ir. 380.

In *Mills v. Hamilton St. Ry.*, 17 P.R. 74, it was held that the defendants (where the plaintiff was nonsuited at the trial and afterwards successful, appealed from the nonsuit) were liable to pay the costs of the trial and appeal, notwithstanding the fact that it was due to deference to the court that the evidence for the defence was not all put in.

As to nonsuit, see also *Baker v. G.T.R.*, 11 O.A.R. 68; *Fox v. The Star*, 78 L.T. 311; *Macdonald v. Worthington*, 7 O.A.R. 531.

NOTICES.

A party may be called upon by any other party to admit any document by a notice to admit. When the trial is adjourned, or if a new trial is ordered, it is not necessary to serve notices to produce or to admit if served for the first trial: *Wilson v. Bayard*, 19 C.P. 98.

Where by statute or otherwise a notice is necessary to be given before action is brought, the costs of preparing and serving the notice can be taxed as between party and party: *Kent v. G.W. Railway Co.*, 4 D. & L.; *Pringle v. McDonald*, 7 P.R. 152; *Edwards v. Great Western Railway Co.*, 12 C.B. 419.

No allowance shall be made for an order for production or any notice to produce or for any inspection, 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. See *Ontario Rule 1155*.

On a party and party taxation in *Brown v. Sewell*, 16 Ch. D. 517, the costs of inspection, which the taxing officer deemed unnecessary, were disallowed. See also *Wicksteed v. Biggs*, 52 L.T. 428. As to production when disallowed, see *Baldwin v. Quinn*, 16 P.R. 248.

One day's notice of taxing costs, together with 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. *British Columbia Rule 765*.

When defendant has not appeared, 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. *British Columbia Rule 764*.

Where one of the defendants gave notice of trial and afterwards abandons his notice upon discovering that the action is not at issue against the other defendant, he cannot tax the costs of preparing the notice and serving same against the opposite party: *Strachan v. Ruttan*, 15 P.R. 109.

The costs of proving a document shall not be allowed unless a notice to admit has been given under Rule 527, except where the omission to give the notice is a saving of expense. See *Ontario Rule 1150*. See ADMISSIONS, and cases cited thereunder.

Where the plaintiff did not appear on a motion by the defendant to dismiss an action for want of prosecution, and an order was made dismissing the action with costs, but the defendant did not serve the plaintiff with a copy of the order, but went on and taxed his costs without notice to the plaintiff, and issued execution for the amount, plaintiff moved to have the execution set aside, but it was held that the omission to serve notice of taxation was not such an irregularity as would entitle

the plaintiff to have the execution set aside, but that the plaintiff was only entitled to have the bill of costs re-taxed: *Cranston v. Blair*, 15 P.R. 167. *Hopton v. Robertson*, 23 Q.B.D. 126, distinguished. *Lloyd v. Kent*, 5 Dowl., followed.

It was suggested in *R. v. Westgate*, 21 O.R. 621, that if with the notice of application for *certiorari* a notice was served stating that unless the prosecution was forthwith abandoned the costs of further necessary proceedings to obtain relief would be asked, such notice would be a ground for asking costs when the conviction is manifestly bad, and when it appears clearly unjust or unfair to put the defendant to such further costs. (*See form of notice in Appendix of Forms.*)

NOTICE OF ACTION.

A returning officer is not entitled to notice in an action for penalties under the Ontario Election Act, R.S.O. 1877, ch. 10: *Walton v. Appjohn*, 5 O.R. 65.

In an action against constable and a justice of the peace, for having and concealing a colt, see *Howell v. Armour*, 7 O.R. 363, p. 1120.

Solicitors for the plaintiff, before action, wrote as follows to the defendant:—"We have been consulted by Mr. J. Cox, concerning injuries sustained by him while in your employ, by which he lost his left hand. We have received instructions to commence an action against you for damages unless the matter is satisfactorily settled without delay. If you intend contesting this suit kindly let us have the address of your solicitors who will accept services of process on your behalf." *Held*, reversing the decision of Cameron, C.J.C.P.D., that this was sufficient notice of action to satisfy the requirements of 49 Viet., ch. 28, secs. 7 and 10 (Ont.): *Stone v. Hyde*, 9 Q.B.D. 76, followed; *Cox v. Hamilton Sewer Pipe Co.*, 14 O.R. 300.

To justices of the peace, see *Howell v. Armour*, 7 O.R. 363, p. 1120; *Bond v. Conmee*, 15 O.R. 716, 10 A.R. 398, p. 1122; *Jones v. Grace*, 17 O.R. 681, p. 1123; *Sinden v. Brown*, 17 A.R. 173, p. 1122.

In an action against a municipal corporation for injuries caused by the defective state of a sidewalk the following letter from plaintiff's solicitor was relied on as a sufficient notice of action:—"As it is Mr. Christie's intention to claim damages from you for such injuries, I give you this notice that a prompt inquiry into the circumstances may be made, and such damages paid as Mr. Christie is entitled to."

Held, per Christie, C.J., and Strong, J., that the letter of the solicitor was not a sufficient notice of action under the statute.

Per Ritchie, C.J.—If notice of action was necessary, the want of it could not be relied on as a defence without being pleaded.

By 25 Vict., ch. 16, sec. 84 (N.B.) and amending Acts relating to highways, the . . . privileges and immunities formerly invested in commissioners of roads are declared to be vested in the council of the town of Portland. By another Act no action could be brought against a commissioner of roads unless notice thereof was given. The town of Portland afterwards became part of the city of St. John, and an action was brought for injuries caused by a broken plank on a sidewalk in what was formerly the town of Portland.

Held, per Strong, J.—One of the "immunities" vested in the council was that of not being subject to an action without prior notice.

Per Taschereau, Gwynne and Patterson, JJ.—Notice was not necessary. The liability did not depend on sec. 84 of 25 Vict., ch. 16, but on the statutory duty of the council to keep the street in repair. The only "privilege or immunity" to the commissioner was exemption from performance of statute labour: *City of St. John v. Christie*, 21 S.C.R. 1.

As to notice to a chief constable in an action for malicious arrest: See *McKay v. Cummings*, 6 O.R. 400, p. 298.

As to notice to constables in an action for replevin for impounding cattle: See *Ibbottson v. Henry*, 8 O.R. 625, p. 532.

As to notice to Division Court bailiff: See *Hanns v. Johnston*, 3 O.R. 100, p. 554. See also *Pardee v. Glass*, 11 O.R. 275, p. 343.

As to notice to registrar of deeds in an action to recover fees: See *Corporation of the County of Bruce v. McLay*, 11 A.R. 477, p. 1827.

A notice of action is necessary in an action for damages against a board of license commissioners acting under R.S.O. 1887, ch. 194: *Leeson v. Board of License Commissioners of the County of Dufferin*, 19 O.R. 67.

Per Proudfoot, J.—A notice of action under the Workmen's Compensation for Injuries Act does not require to be signed, or to be on behalf of any one: *Mason v. Bertram*, 18 O.R. 1.

As to notices to inspector of fisheries under 31 Vict., ch. 60 : See *Venning v. Stedman*, 9 S.C.R. 206.

As to raising objections as to want of notice of action by plea : See *Verratt v. McAulay*, 5 O.R. 313; *McKay v. Cummings*, 6 O.R. 400.

As to registrar of deeds for wrongly registering documents : See *Ontario Industrial Loan and Investment Co. v. Lindsey*, 3 O.R. 66.

As to notice of action in libel : The statement of claim must be confined to the matters complained of in the notice : *Obernier v. Robertson*, 14 P.R. 553.

As to notices under Government Railway Act : See *Kearney v. Oakes*, 18 S.C.R. 148.

As to notice to constable : Where in an action against a constable for a false arrest it is found by the jury that the defendant acted in the honest belief that he was discharging his duty as a constable, and was not actuated by any improper motive, he is entitled to notice of action, and such notice must state not only the time of the commission of the act complained of, but that it was done maliciously : *Scott v. Reburn*, 25 O.R. 450.

The object of the "Act to protect justices of the peace and others from vexatious actions," R.S.O. ch. 73, is for the protection of those filling a public duty, even though in the performance thereof they may act irregularly or erroneously, and notice of action in such case must allege that the acts were done maliciously and without reasonable and probable cause; but where a person entitled to the benefit of the Act voluntarily does something not imposed on him in the discharge of any public duty, such notice is not required : *Kelly v. Barton*, 26 O.R. 608; *Kelly v. Archibald*, 26 O.R. 608 affirmed in appeal, 22 A.R. 522.

OFFICIAL GUARDIAN.

The costs of an official guardian or other guardian of an infant, lunatic, etc., are governed by *Ontario Rule 1138*. *Manitoba Rule 930* makes the same provisions for the costs of the official guardian as the Ontario Rule. The Ontario Rule is as follows:—

"Where the official or other guardian of an infant, lunatic, or person of unsound mind is entitled to costs, or is entitled to costs 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."

In British Columbia the costs of a guardian *ad litem* are provided for in Rule 760, which is as follows:—

"When the court or a judge appoints a solicitor to be guardian *ad litem* of an infant or a person of unsound mind, the court or judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties, or some one or more of the parties, to the cause or matter in which such appointment is made, or out of any fund in court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require."

Nova Scotia Rules are similar to the British Columbia Rules.

No matter what is the result of the litigation, the costs of the official guardian *ad litem* are usually ordered to be paid either by the plaintiff personally, with power to add them to his own costs, or out of the estate. If there is any personal misconduct upon the part of the infant for whom the guardian *ad litem* appears, he may be ordered to pay the costs personally, not only of the official guardian *ad litem*, but also of the plaintiff: *Lipsett v. Perdue*, 18 O.R. 575. See GUARDIAN, and cases cited thereunder.

ORDERS.

No order made by the court, or any judge thereof by the consent of parties, or as to costs only, which by law are left to the discretion of the court, shall be subject to an appeal, except by leave of the court or judge making such order. *Manitoba Rule 47*.

No order made by the High Court, or any judge thereof by the consent of parties, or as to costs only, which by law are left to the discretion of the court, shall be subject to any appeal except by leave of the court or judge making such order. See DISCRETION AS TO COSTS, and cases cited thereunder, also *Moir v. Huntington*, 19 S.C.R. 363; *Fleming v. Toronto*, 19 O.A.R. 318; *Miller v. Macdonald*, 14 P.R. 499.

As to leave to appeal, see the following cases:—*McGannon v. Clarke*, 9 P.R. 555; *May v. Thompson*, W.N. (1892) 53; *Ford v. Mason*, 15 P.R. 398; *Re Sarnia Oil Co.*, 15 P.R. 348; *Re Central Bank*, 17 P.R. 395; *Russell v. Russell* (1892), p. 152; *Wansley v. Smallwood*, 11 O.A.R. 439.

Orders obtained on *præcipe* are orders of the court, and a fee on such orders is properly taxable. Only one attendance, however, should be allowed for obtaining a *præcipe* order. See *Gage v. Canada Publishing Co.*, 19 Canada Law Journal 175; *Latour v. Smith*, 13 P.R. 214.

The taxing officer cannot receive evidence to show that costs should be taxed otherwise than ordered: *Keim v. Yeagley*, 6 P.R. 60; *Edwards v. Pearson*, 20 Canada Law Journal 93.

OVER CAUTION.

On a party and party taxation the taxing officer should disallow all costs incurred through over caution, negligence or mistake, unless he is of opinion that such costs were incurred by the solicitor because in his judgment reasonably exercised they were conducive to the interests of the client. On a solicitor and client taxation, however, the taxing officer has a wider discretion. See *Re Allenby v. Weir*, 14 P.R. 235; *Re Ormston*, 58 L.T. 74; *Robertson v. Robertson*, 24 Gr. 555; *Pringle v. McDonald*, 7 P.R. 152; *Logan v. Kirk*, 14 P.R. 130; *Re O'Donohue*, 12 P.R. 612; *Baldwin v. Quinn*, 16 P.R. 248.

OVER-HOLDING TENANTS ACT.

(*R.S.O. Ch. 171, 1897.*)

The costs under this Act are regulated by section 7.

The judges of the High Court may from time to time make such rules respecting costs, in cases under this Act, as to them seem proper, and the County Court Judge, before whom any such case is brought, may in his discretion award costs therein according to any such rule then in force, and if no such rule is in force reasonable costs in his discretion to the party entitled thereto, and in case the party complaining is ordered to pay costs, execution may issue therefor out of the County Court as in other cases in the County Court where an order is made for the payment of costs.

As the judges of the High Court of Justice have not made any rules as to costs under this section, it would appear that the judge before whom any matter under this statute comes for adjudication, has full power over the costs. The costs are left entirely to his discretion without any limitation whatever. He would, no doubt, however, be guided by the importance and difficulty of the matter, and by the tariff of the court in which the matter is brought when applicable.

PARTITION ACTIONS.

The costs in partition action are governed by *Ontario Rule 1146*, which is as follows:—

In action or proceedings for administrations or partitions, 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 proceedings, not including counsel fees, and there shall be allowed for the other costs of the suit, payment of the estate, a commission on the amount realized or on the value of the property partitioned, which commission shall be apportioned amongst the persons entitled to costs as may seem just. Such commission shall be as follows:—

On the first \$500	20 per cent.
On every additional \$100 over \$500 and up to \$1,500	5 "
On every additional \$100 over \$1,500 and up to \$4,000	3 "
On every additional \$1,000 over \$4,000 and up to \$10,000	2½ "
On every additional \$1,000 over \$10,000...	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." See *Manitoba Rule 938*. See ADMINISTRATION ACTIONS, and cases cited thereunder. See also *Campbell v. Campbell*, 16 Canada Law Journal, 16; *Brown v. Brown*, 19 Canada Law Journal, 367; *Wright v. White*, 9 P.R. 447.

When two or more actions or proceedings are instituted for administration or partition or sale, all or any of the costs of any action or proceeding which have been unnecessarily prosecuted may be disallowed. See *Ontario Rule 1147*. See ADMINISTRATION ACTIONS, and cases cited thereunder.

Under this rule the costs of an administration or partition action may be disallowed if it has been commenced or defended unnecessarily.

An appeal by the plaintiff from an order of Meredith, J., in Chambers, dismissing an application made by the plaintiff under

sec. 91 of the Judicature Act, 1895, for an order directing the trial in the High Court of an issue arising out of a proceeding taken under the Partition Act, which issue had been tried in a County Court when the jury disagreed.

It was contended on behalf of the plaintiff that it was a proper case for trial in the High Court, inasmuch as difficult questions of law and fact arose, and that there was jurisdiction to make the order: *Symonds v. Symonds*, 20 C.P. 271.

On behalf of the defendant it was contended that there was no jurisdiction to make the order, because neither the issue nor the proceedings out of which it arose was an "action," and the words of sec. 91 of the Judicature Act, 1895, were "in any action pending in a County Court." The same words were used in the Law Reform Act, under which *Symonds v. Symonds* was decided, but in the judgment of the court the words "in any action" were omitted in quoting the section, and therefore the decision seemed to have proceeded upon a misapprehension or upon a different enactment from that now in question. The issue here was not an "action." See the interpretation clause of the Judicature Act, 1895, sec. 2, sub-sec. 3, and *Hamlyn v. Betteley*, 6 Q.B.D. 63.

Per Curiam. The decision in *Symonds v. Symonds* must be followed. We cannot assume that it proceeded upon an enactment which had no existence. We must rather suppose that the words "in any action" were omitted in quoting the section by a printer's error. The case is a proper one for trial in the High Court, and the appeal must be allowed. Costs here and below to be costs in the cause: *Brown v. Neff*, 33 Canada Law Journal, 201. See ADMINISTRATION ACTIONS, and cases cited thereunder.

PAYMENT INTO COURT AND OUT OF COURT.

In an action where the defendant pays into court either in the alternative or as a sole defence to the action, and plaintiff refuses to accept the amount so paid in, as being insufficient, at the trial, if the amount paid in by the defendant is found to be sufficient, the defendant is entitled to have judgment entered in his favour and to recover the general costs of the action. *Hart v. Davies*, 28 N.S.R. 303.

The plaintiff, at a trial in the High Court, obtained a judgment for damages and costs. On appeal by the defendants to the Court of Appeal, the appeal was dismissed with costs. The

defendants then appealed to the Supreme Court of Canada, and gave the security required by sec. 46 by the Supreme and Exchequer Courts Act but no other security. The plaintiff thereupon made an application for an order for payment out of court to them of the sum of \$200, paid into court by the defendants as security for the costs of their appeal to the Court of Appeal.

It was held that proceedings to enforce the plaintiff's High Court judgment was not stayed, and that the court was not bound to pay out to the plaintiff the sum paid in by the defendants. The judgment of the Court of Appeal being stayed, pending the result of the appeal to the Supreme Court, as the Supreme Court might reverse the judgment, and for that reason the money should not be paid to the plaintiff unless the plaintiff's solicitor would undertake to repay the money in the event of the Supreme Court reversing the judgment at the Court of Appeal: *Rombough v. Balch*, 19 P.R. 123.

If the plaintiff does not accept the money paid into court in satisfaction he may become liable for the whole costs of the action: *Bank of London v. Guarantee Co.*, 12 P.R. 499.

Under this rule no judgment or order is necessary to enable the plaintiff to tax his costs unless it becomes necessary to enforce payment. As to scale of costs see *Ontario Rule 1133*. Also *Chick v. Toronto Electric Light Co.*, 12 P.R. 58.

Where it was held that the costs are not taxable on any higher scale than if the judgment had been recovered for the amount recovered out of court.

Where the defendant paid money into the court in full satisfaction of the plaintiff's claim and the plaintiff refused to take the money out or to tax his costs, but proceeds to trial and his action is dismissed, the plaintiff in this case would not be entitled to the costs of the action.

PARTY AND PARTY COSTS.

Mallins, V.-C., in *Smith v. Buller*, L.R. 19 Eq. 473, laid down principles on which the tariff of costs as between party and party is framed.

"The costs chargeable under taxation as between party and party are all that are necessary to enable an adverse plaintiff to conduct the litigation and no more. Any charges for conducting litigation more conveniently may be called luxuries and must be paid by the party incurring them."

Where the plaintiff, after default of appearance to a writ, not specially indorsed, delivers particulars of his claim under Rule 576, he shall not be entitled to the costs of the particulars unless the taxing officer is satisfied there was good reason for not specially indorsing the writ. See *Ontario Rule 1134*.

See TAXATION, and cases cited thereunder.

PERUSAL

The fee for perusing affidavits is now regulated by *Ontario Tariff, item 89*, which is as follows:—

Perusing 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.

On the higher scale per folio, over 20 folios, 5 cents per folio (not in any case to exceed the sum of \$5.00).

On the County Court scale the fee for perusing affidavit is 50 cents, no matter how many folios the affidavit contains.

No fee is allowed for perusing a single joinder of issue or for the perusal of depositions taken on an examination for discovery. In High Court cases the taxing officer has a discretion to allow a reasonable fee for perusing interrogatories and cross-interrogatories on commissions. See DISBURSEMENTS AND TAXATION, and cases cited thereunder.

PLAINTIFFS, JOINDER OF.

Where two plaintiffs are joined in one action, but where the causes of action are distinct, and one of the plaintiffs only succeeds, the successful plaintiff is not entitled to recover from the defendant the whole of his costs of action, and the defendant is only entitled to recover from the successful plaintiff the costs occasioned by joining such plaintiff: *Gort v. Rowney*, 17 Q.B.D. 625. See MISJOINDER, and cases cited thereunder.

PLANS.

The necessity for maps or plans used at a trial and the sum paid for them, and that they were prepared or procured with a view to the trial of the case, shall be shown by affidavits. The taxing officer under the tariff may allow such sum as appears to him to be reasonable for preparing the map or plan necessary for and used at the trial.

Expenses incurred for services and other special work of that nature, made in order to qualify a witness (surveyor) to give evidence, are not taxable between party and party. The taxing officer is authorized to make a reasonable allowance for maps and plans used at the trial, but the necessity for such maps and plans must be proved by affidavit. The taxing officer can in his discretion refuse to allow charges for maps provided to identify the line mentioned in the judgment, as that which the judge considers a true line: *McGannon v. Clark*, 9 P.R. 555.

The costs of plans and maps used at the trial by the court and jury may be allowed: *Pilgrim v. Southampton and Dorchester C. W. Co.*, 8 C.B. 25; but see *McCannon v. Clark*, 9 P.R. 959, cited above.

The amount paid for such map or plan must also be set out in the affidavit. See *Ontario Rule 1174*. See also *Batley v. Kynoch*, L.R. 19 Eq. 90. *Manitoba Rule 956* makes similar provisions for maps or plans used in the trial and gives the taxing officer authority to make a reasonable allowance for same. See MAPS.

PLEADINGS.

Every writ, pleading or other document may be printed or written in whole or in part, but no more than four copies thereof exclusive of the draft, but inclusive of all other copies that may be required or made in the progress of the causes, shall be allowed. If more than three copies exclusive of the draft are required the party may have the writ or pleading or document printed, and he shall in lieu of all charges for copies be allowed 30 cents per folio of the writ or pleading or other document and his reasonable disbursements for printing.

When the plaintiff is directed to pay to the defendant the costs of the cause the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which appears to have been rendered necessary by the default of such defendant), but there shall be deducted from such costs any sum which has been paid by the plaintiff according to the order of the court at the time of any amendment. See *Nova Scotia Rules*.

As to delivery of pleadings, services and notices, the fees are not to be allowed when the same solicitor or firm of solicitors is for both parties, unless it is necessary for the purpose of making an affidavit of service. See *Nova Scotia Rules*.

As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent or client, or for counsel. See *Nova Scotia Rules*.

Where the same solicitor or firm of solicitors is employed for two or more defendants, and separate pleadings are delivered or other proceedings had, by or for two or more such defendants separately, the taxing authority shall consider in the taxation of such solicitor's bill of costs, either between party and party and between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of the opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed. See *Nova Scotia Rules*. See COPIES, and cases cited thereunder. See AMENDMENTS, and cases cited thereunder. See TAXATION, and cases cited thereunder.

POUNDAGE.

In calculating poundage, to which a sheriff is entitled, regard must only be had to the amount actually paid over to the execution creditor. The sheriff is not entitled to any commission on what he retains for his own fees and expenses: *Michie v. Reynolds*, 24 Q.B. 302.

POSTPONING TRIAL.

Ontario Rule 553 gives the judge full power to postpone or adjourn the trial.

Where the trial is postponed on account of the absence of a material witness, where every effort is made to secure the attendance of such witness, the costs will be made costs in the cause: *Brown v. Porter*, 11 P.R. 250. See TRIAL, and cases cited thereunder. See TAXATION, and cases cited thereunder. See DISCRETION AS TO COSTS, and cases cited thereunder.

PRACTISING WITHOUT A CERTIFICATE.

Under R.S.O. 1897, ch. 174, secs. 22, 23 and 24, a solicitor who has not taken out his annual certificate renders himself liable to suspension, etc., even though it is shown that he is interested in the subject matter of the litigation: *Re Clarke*, 32 O.R. 237. See SOLICITOR, and cases cited thereunder.

PROSECUTING OR DEFENDING IN PERSON.

Where an action is brought or defended in person, the party is only entitled to tax, if successful, his actual disbursements. If he was a necessary witness on his own behalf he would be entitled to the usual witness fee. He is also entitled to fees paid counsel during the course of the action.

Where, however, the party prosecuting or defending in person is a solicitor, he is entitled to tax the general costs of the action if successful, except instruction; and also to tax disbursements including fees properly paid to counsel. See SOLICITOR, and cases cited thereunder.

PROVINCIAL ELECTIONS.

An election petition was dismissed at the trial without costs. It was held that the petitioner must pay to the sheriff the costs incurred on the publication of the notice of trial. The sum deposited as security for costs is not a security for the sheriff's costs, but payment out of court will only be ordered on condition that the sheriff's costs be paid.

The sheriff is not entitled to make any charge for attending to the publication, as there is no allowance for such attendance authorized by the tariff: *East Middlesex Provincial Election*. (Ontario Election Cases, Vol. II., p. 150.)

In *Vanalstine v. Harty*, Kingston (Provincial Election, Vol. II., Ontario Election Cases), a motion was made to set aside a cross petition, that as no security for costs was given the cross petition was irregular.

Osler, J.A., gave judgment dismissing the motion with costs, holding that under sec. 13 of the Controverted Election Act, R.S.O. 1887, ch. 10, security for costs is required only in the case of the original petition, and not in that of a cross petition.

PROHIBITION.

The court has power to and always award costs to the successful party: *McLeod v. Enigh*, 12 P.R. 45.

Application for prohibition to a County Court on the ground that the plaintiff's claim was part of an unsettled account exceeding in whole \$600:—*Held*, that it was competent and indeed necessary for the judge to inquire into and decide the facts which would determine the question of jurisdiction; and as he had decided the facts of jurisdiction the court above shall not

interfere by reviewing his decision, except under very exceptional circumstances: *Joseph v. Henry*, 19 L.J. Q.B. 369, and *Elston v. Rose*, L.R. 4 Q.B. 4, followed; *Loppky v. Hofley*, 12 Man. R. 335.

QUASHING CONVICTION.

The defendant was a foreman of a Grand Trunk Railway Company Elevator, and superintended the unloading of grain from an elevator on Sunday, and was convicted of following his ordinary calling on the Lord's Day.

On appeal it was held that R.S.O. ch. 246 does not apply to railways, and as it does not apply to railways it could not apply to railway employees, and consequently the conviction was quashed with costs against the prosecutor: *The Queen v. Reid*, 30 O.R. 732.

QUIETING TITLES.

When any person has shown himself, in the opinion of a Local Master, to be entitled to a certificate or conveyance under the Act, and has published and given all the notices required, the Master shall write at the foot of the petition and sign a memorandum to the following effect:—"I am of the opinion that the petitioner is entitled to a certificate of title (or conveyance) as prayed (or subject to the following incumbrances, etc., as the case may be), and shall transmit the petition (if by mail, the postage being prepaid), with the deeds, evidence and other papers before him in reference to him thereto, to the inspector of titles with whom the petition was entered, and the inspector shall examine the same carefully, and if he finds any defect in the evidence of title or in the proceedings he shall, by correspondence or otherwise, point the same out to the petitioner or his solicitor, or to the Master, as the case may be, in order that the defect may be remedied before a judge is attended with the petition and papers for approval." See *Ontario Rule 1108*.

The inspector of titles' fee is \$8 for entry. Where the petition is referred to the referee of titles at Toronto an additional fee of \$4 is payable on the certificate of title.

The fees of solicitor and counsel and the fees payable in stamps for proceedings under the said Act, shall respectively be the same as in respect of the like proceedings in a cause or matter. See *Ontario Rule 1114*. See also *Bain v. Attorney-General* (1892), p. 261; *Mansell v. Attorney-General*, 2 P.D. 265; *Re Strachan* (1895), 1 Ch. 439; *Reg. v. Bank of England*, 64 L.T. 468. See Ontario tariff of fees prescribed to be paid to referees of titles.

QUO WARRANTO.

Where quo warranto proceedings are commenced in the High Court of Justice, but afterwards referred to the judge of the County Court, the costs from the time that the action was referred to the County Court Judge will not be on County Court scale, but will continue to be on the High Court scale.

In the County Court the costs of quo warranto proceedings must be taxed on the County Court scale, and the costs of quo warranto proceedings in the High Court are to be taxed on the High Court scale: *Queen and Stonehouse v. Hill*, 9 C.L.T. 170.

RECORD.

Where a record is withdrawn by the consent of parties it cannot be entered without again paying the usual fees. See JURY FEES.

Where the trial of a case is postponed no further fees for entry are payable. See *Morton v. G. T. R.*, 19 Canada Law Journal, 372. See also *Polson v. Burke*, V. 1 Manitoba.

REFERENCES.

When, 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 a solicitor to represent them the Master may nominate such solicitor for the purpose of the proceedings before him.

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 actions or proceedings, which, in his opinion, have 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 upon being represented by a different solicitor, such party is personally to pay the costs of his own solicitor of and relating to the proceeding before the Master with respect to which 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 they nominated. See *Ontario Rules 1147 and 1148*. See *Merchants Bank v. Monteith*, 23 Canada Law Journal, 415; *Gorham v. Gorham*, 17 Gr. 386; *Lynch v. O'Brien*, R.E.D. 396 (Nova Scotia).

When anything in the course of an action of 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 and refusal. See ADMISSIONS, and cases cited thereunder.

Where a County Court case is referred at the trial, the brief, counsel fee at trial and such fee on the reference as the importance of the case will warrant, should be taxed.

Where an action is set down for trial, and the presiding judge orders the action to be referred, a counsel fee should be taxed for attendance at the trial when the reference was ordered. Witness fees should also be allowed.

Where an action was referred, and the order provided that the costs of the cause and the costs of the reference and award should abide the event, and the defendant's counter-claim exceeded the plaintiff's claim, it was held that the defendant was entitled to the costs of the action, reference and award, but the plaintiff was entitled to the costs of the issue found in his favour: *Lunn v. Campbell*, 53 L.T. 900.

Where a defendant paid a sum of money in Court in satisfaction of the plaintiff's claim, it was held that the defendants were entitled to the general costs of the action and the award and the costs of the issues found in their favour, but the plaintiff was entitled to the costs of the issues on which he had succeeded: *Goutard v. Carr*, 53 L.J.Q.B. 55; *Waring v. Pearman*, 35 L.T. 633.

RETAINING FEE OF SOLICITOR.

On a party and party taxation a retaining fee to counsel is never allowed, nor will a retaining fee be allowed on a solicitor and client taxation to a solicitor who also acts as counsel: *Greene v. Briggs*, 7 Hare 279; *Smith v. Effingham*, 10 Beav. 378; *In re McBride*; *Farley v. Davies*, 2 Chy. Ch. 153. It appears where a retainer has been actually paid by the client he could not succeed in any action to recover it back: *Re Geddes and Wilson Solicitor*, 2 Chy. Ch. 447.

A retainer need not be in writing, but a solicitor should always obtain from his client a written retainer as a matter of precaution, for in the event of the client disputing a verbal retainer there is nothing but assertion against assertion and the solicitor must bear the costs: *Higgins v. Peppin*, 2 Beav. 403.

A solicitor should have special authority from his client before commencing an action, but may in the exercise of his general authority defend a suit brought against his client: *Wright v. Castle*, 3 Meriv. 12; *Lord v. Kellett*, 2 Myl. K. 1.

The defendant was ordered to pay the plaintiff's costs of a former action as between solicitor and client. A retaining fee which the plaintiffs had agreed in writing to pay their solicitor was held not to be taxable: *McKee v. Hamlin*; *Hamlin v. Connolly*, 16 P.R. 207; *Ford v. Mason*, followed; *Re Fraser*, 13 P.R., distinguished. See SOLICITOR and SOLICITOR AND CLIENT, and cases cited thereunder.

Notwithstanding that the retainer of a solicitor by two persons is in form a joint one, the court will look into the facts of the case and discover the real nature of the transaction and will determine the rights of the solicitor and client accordingly: *Re Cameron & Lee, Solicitors*, 18 P.R. 176.

The solicitor during the progress of the action in respect of which the costs in question were incurred, made a contract in writing with his clients for the payment to him of a retaining fee of \$100, explaining fully to them the effect of the bargain, and that in case of their success in the action and costs being awarded to them, they would not be able to tax against or claim from the opposite party the amount of the fee. The officer allowed the retaining fee on taxation, and reported that the contract was a fair and reasonable one:—

Held, on appeal, that the contract could not be enforced against the clients.

Section 51 of the Act respecting solicitors, R.S.O. ch. 147, relates to matters of conveyancing, etc., and not to the conduct of an action in the ordinary way: *Ford v. Mason*, 16 P.R. 25.

By the judgment in an action the defendant was required to pay the plaintiff's costs of a former action, as between solicitor and client to be taxed:—

Held, that an unpaid retaining fee which the plaintiffs had agreed in writing to pay to their solicitors, over and above the costs of the action, could not be taxed against the defendant: *Re Geddes and Wilson*, 2 Ch. Chamb. R. 447, and *Ford v. Mason*, 16 P.R. 25, approved and followed; *Re Fraser*, 13 P.R. 409, distinguished; *McKee v. Hamlin*, *Hamlin v. Connolly*, 16 P.R. 207.

Notwithstanding that the retainer of a solicitor by two persons is in form a joint one, the court will look into the facts of the case to discover the real nature of the transaction, and

will determine the rights of the solicitor and clients accordingly. Such a retainer does not necessarily make the persons signing it joint debtors to the solicitor to whom it was given, but it must be taken distributively. And, upon the facts of this case, the client whom the solicitor sought to charge with the whole costs of the defence to an action conducted up to a certain stage jointly on behalf of this client and another, two of the defendants in the action, and afterwards on behalf of this client alone, and by a new solicitor on behalf of the other, was held liable for only one-half of the joint costs during the time that the two clients were represented by the same solicitor, but thereafter for the whole of the costs reasonably and properly incurred by such solicitor: *Re Cameron & Lee, Solicitors*, 18 Ont. P.R. 176.

Plaintiff sued C. and G., G. being a married woman, and obtained a verdict against both. In term both defendants obtained a rule to enter a nonsuit for them or a verdict for G. The latter part of the rule was made absolute. The taxing officer disallowed the plaintiff any costs in term, because he had not given notice that he abandoned his verdict against G., and taxed to her one-half of the costs of the term motion, both defendants having appeared by the same attorney:—*Held*, on appeal, that a proper proportion of the costs in term should be allowed to the plaintiff against defendant C., and the taxing authority was directed to enquire whether any binding contract of retainer had been entered into by G., and if not, to allow her only disbursements: *Clark v. Creighton*, 9 P.R. 125.

An action brought by the solicitors in the plaintiff's name was dismissed with costs, and judgment entered against the plaintiff. The solicitors had acted without any written retainer from the plaintiff or any instructions from her personally, relying on instructions received from the plaintiff's husband, which she positively denied ever having given, and also on letters written to her, the sending of which was not strictly proved, and which she denied ever having received.

On a motion made therefor by the plaintiff, the judgment and all subsequent proceedings were set aside, and the solicitor ordered to pay the plaintiff's costs as between solicitor and client, and the defendant's costs as between party and party: *Scribner v. Parcells*, 20 O.R. 554.

The defendant's testator was a sheriff and official assignee under the Insolvent Act of 1875. The plaintiff was solicitor for the City Bank and also for one B., upon whose petition one

G. F. was placed in insolvency. The official assignee became creditors' assignee. At the first meeting of creditors, B. being chairman, the plaintiff, representing the City Bank, whose claim amounted to nearly the whole indebtedness, moved a resolution to sell certain goods of the insolvent, that the assignee should take the necessary proceedings to realize the assets and recover certain property alleged to belong to the insolvent, and for that purpose to retain counsel if necessary. B. became inspector of the estate, and consulted with the plaintiff, and on his advice instructed the assignee to defend and bring actions. The assignee was obliged to pay costs and damages in an action brought against him to recover goods wrongfully taken by him; and he also paid the plaintiff some costs, whereby the assets of the estate were exhausted, and a small sum in addition paid by the assignee out of his own funds. The defendant's testator was subsequently removed from the office of assignee, and a new assignee appointed, whereupon he presented a petition to the Insolvent Court in which he alleged that he had retained the plaintiff, and had been put to great expense in obtaining and defending suits as assignee, and had become liable to pay large sums of money in respect thereof, and prayed payment by the new assignee, which was refused. The plaintiff delivered his bills to the defendant's testator in his lifetime. After the death of the testator the plaintiff wrote a letter to one of his sons about the costs, in which, in relating the facts, he stated that he was attorney for the bank. The plaintiff now sued the personal representative for his unpaid costs of the proceedings carried on by him. *Senkler, Co.J.*, who tried the case, found that the retainer was not a personal one by the assignee, but the plaintiff had acted for the benefit of the creditors, and was in fact their solicitor:—

Held, *Armour, J.*, dissenting, affirming the judgment of *Senkler, Co.J.*, it was a question to be determined on the evidence whether the retainer was a personal one by the assignee, or whether he was acting merely on the instructions of creditors; that upon the evidence the plaintiff was solicitor for the creditors and not for the assignee personally; and, notwithstanding the admission contained in the assignee's petition, he had not incurred any personal liability for the costs: *Butterfield v. Wells*, 4 O.R. 168, Q.B.D.

Per Armour, J.—The presumption is that when a solicitor is retained, the person retaining him is liable for costs, and to avoid liability he must show some special agreement to the

contrary; and the evidence here not only did not displace the presumption, but shewed that the testator had always considered himself liable for the costs. *Ib.*

Per Hagarty, C.J.—It is the duty of a solicitor to inform his client, when a trustee, as to the advisability of taking proceedings and incurring costs when it may become a question whether the costs will have to be paid out of his own private funds or out of the trust fund or estate. *Ib.* See SOLICITOR.

REVISION OF TAXATION.

Revision of taxation is necessary in all actions mentioned in *Ontario Rule 1167*, namely:—

In actions for the administration of 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 is to be paid out of any estate in which any infant, lunatic, or person of unsound mind is interested), a revision of taxation may be had under the provisions of *Ontario Rules 1182 and 1183*. After the revision of the local taxing officer an appeal will lie to a judge as provided by *Ontario Rules 773 and 774*.

The Ontario Consolidated Rules, as revised, provide only for an appeal to a judge, and there is no provision for an appeal from a local taxing officer to the taxing officer in Toronto. The only provision in the Ontario Rules for the revision of a taxation by a local taxing officer by the taxing officer in Toronto is under the provisions of *Rule 1167* above referred to.

The taxing officer may, in his discretion, call for evidence, and can properly refuse to proceed with the taxation until the required evidence is produced. Vouchers for all disbursements should be produced and filed.

On a revision of taxation the taxing officer has power not only to disallow items improperly taxed, but can also restore items improperly taxed off. See TAXATION, and cases cited thereunder.

A party dissatisfied with the allowance or disallowance by the taxing officer of the whole or any part of any item, may, at any time before the certificate is signed, deliver to the other party interested therein, and to the taxing officer, objections in writing to such allowance or disallowance, specifying concisely the items objected to, and may thereupon apply to the taxing officer to review the taxation in respect of the same.

The taxing officer shall hold the taxation open for a reasonable time in order to allow such objections to be delivered. *Ontario Rule 1182.*

It is not necessary under this Rule to state the reasons for the objections to the taxation; it is sufficient to state the items objected to. See *Simmons v. Storer*, 14 Ch. D. 154. Objections must be filed before the taxing officer signs the bill, otherwise an appeal will not lie. See *Platt v. Snowden*, 12 P.R. 273; *Cuerrier v. White*, 12 P.R. 571; *Burnaby v. Gardiner*, James 107 (Nova Scotia); *Tupper v. Wright*, James 303 (Nova Scotia). After the bill is signed the taxing officer has no power to alter his ruling: *Langtry v. Dumoulin*, 10 P.R. 444. See Appendix of Forms for form of objection to taxation.

Upon the application the taxing officer shall reconsider and review his taxation upon such objections, and he may receive further evidence in respect thereof, and, if required, he shall state, either in his certificate of taxation or by reference to such objections, the grounds and reasons of his decisions thereon, and any special facts or circumstances relating thereto. *Ontario Rule 1183.* See *Stark v. Fisher*, 11 P.R. 235; *Re Hill*, 33 Ch. D. 266.

Review of Taxation by Judge on Party and Party Taxation.

In cases in which *Ontario Rule 773* does not apply, a party dissatisfied with the certificate of the taxing officer may apply to a judge in chambers to review the taxation as to any item or part of an item which has been objected to, as provided by *Ontario Rules 1182 and 1183*; but the certificate of the taxing officer shall be final and conclusive as to all matters which have not been objected to in manner aforesaid. *Manitoba Rules 961 and 962* are to the same effect as the Ontario Rules.

The British Columbia Rule dealing with this subject is as follows:—

Order for Review of Taxation.

Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, or to any item or part of an item in any bill of costs taxed by him, may, within fourteen days from the date of the certificate or allocatur, or such other time as the court or judge or taxing officer at the time he signs his certificate or allocatur may allow, apply to a judge in 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 he may think just. See TAXATION, and cases cited thereunder.

ROGATORY LETTERS.

Where it is necessary to obtain the assistance of a foreign court to compel the attendance of a witness before a commissioner appointed by a commission, an order can be obtained for the issue of letters rogatory, but such an order will not be made unless it is clearly established that they are necessary: *Ehrmann v. Ehrmann*, 75 L.T. 37; *Re Ex Parte Smith*, 2 Cart. 330. See also the following statutes: Imperial Statutes, 48 and 49 Vict., ch. 74; R.S.O. ch. 73, sec. 52.

REVIVING ACTIONS.

The person by or against whom the action is continued becomes liable to pay the whole costs, not only those incurred before the order: *Watson v. Holliday*, 20 Chy. D. 780; *Boynton v. Boynton*, 9 Chy. D. 250.

SCALE OF COSTS.

Where at the trial of an action the plaintiff has been awarded judgment with costs entered, *Ontario Rule 1174* gives the taxing officer no jurisdiction to deal with the scale of costs: *Dale v. Weston*, 17 P.R. 513; *Brown v. Hose*, 14 P.R., distinguished.

In British Columbia the costs of making briefs on appeal may be allowed under the tariff heading of "copies of pleadings, briefs and other documents where there is no provision made"; and if there is no allowance for fees paid to the official stenographer, his transcript may be taxed as a copy: *Edison General Electric Co. v. Bank of British Columbia*, 5 B.C.R., 34.

In the action for the price of goods sold, where the goods are sold according to a price list agreed to, the amount is not ascertained by the act of the parties: *Evans v. Chandler*, 19 P.R. 160; *Thompson v. Pearsons*, 18 P.R. 420, distinguished.

In an action where two plaintiffs join, and one succeeds, it was held in *D'Hormusjee & Co. and Isaacs & Co. v. Grey*, 10 Q.B.D. 13, that the successful plaintiff was chargeable with the costs of joining the unsuccessful plaintiff, but in *Viscount Gort v. Rowney*, 17 Q.B.D. 625, in an action brought by two plaintiffs where the causes of action were separate, and judgment was given in favour of the defendant against one plaintiff, and in favour of the other plaintiff against the defendants, and the costs were ordered to abide the event of the action, it was held that the defendants were entitled to costs occasioned by joining the unsuccessful plaintiff, and that the successful plaintiff was entitled to the general costs of the action.

Where a case has been transferred from the County Court to the High Court of Justice the costs should be taxed on the County Court scale up to the time the case was transferred to the High Court and on the High Court scale after the transfer of the case from the County Court.

Section 113 of the Drainage Act, R.S.O. ch. 226, provides that the County Court tariff shall apply to all actions or proceedings under that Act. In *McCulloch v. Township of Caledonia*, 19 P.R. 115, it was held that the County Court tariff only applies to actions which ought properly to have been commenced by a notice under sec. 93 of the Drainage Act, and did not apply to actions which might properly be brought notwithstanding Drainage Act and which were only referred to the Drainage Referee under sec. 94 of the Drainage Act because the court was of the opinion that the action could be more conveniently disposed of by him.

Re Township of Metcalfe and Township of Adelaide and Warwick, Re Township of Colchester North and Township of Gosfield North, 19 P.R. 188, it was held that no tariff of fees having been framed under secs. 111, 112 and 113 of the Municipal Drainage Act, R.S.O. ch. 226, the County Court tariff applies not only to proceedings before the Drainage Referee, but also to appeals from his decisions. On an appeal to the Court of Appeal from the decision of the Drainage Referee only County Court costs should be allowed.

Where an action is brought to recover damages for injury to property by the construction of drainage works, and the claim might have been commenced by notice under the provisions of sec. 93 of the Municipal Drainage Act, R.S.O. ch. 226, and an order is subsequently made referring the action to the referee for trial, only County Court costs should be allowed: *Moke v. Township of Osnabruck*, 19 P.R. 117. See *Feuster v. Raleigh*, 31 Canada Law Journal, 287.

The plaintiff brought a County Court action against the defendant to recover \$140 balance alleged to be due from the defendant for the sale of a chattel.

The defendant paid into court the sum of \$95 in full which the plaintiff accepted in due course. On the application of the defendant the judge of the County Court made a summary order allowing the defendant to set off his costs on the County Court sale, in the excess of such costs as he would have incurred, if the action had been brought in the Division Court

against the costs of the plaintiff and gave the defendant liberty to enter judgment and issue execution for the excess, if any, of the defendant's costs, over and above costs of the plaintiff.

It was held that the plaintiff was entitled to costs on the County Court scale irrespective of the amount paid into court and accepted by him in full of his claim. The plaintiff being entitled to his costs on the County Court scale by the provision of Rule 425, they were not subject to the discretion of the judge as Rule 425 is not qualified by Rule 1130. Under sec. 52, R.S.O. ch. 55 (The County Court Act), as a judge's order was in its nature final and appeal would lie: *Babcock v. Stan-dish*, 19 P.R. 195.

In *Eagor v. Jackson*, 16 P.R. 485, it was held that on an action on a bond for \$500 given as security for payment of costs in the Supreme Court of Canada, in a prior action, where judgment was given for the plaintiff for \$318.55, the amount at which the costs, that the amount recovered, *i.e.*, \$318.55, was not ascertained by the act of the parties or by the signature of the defendants as provided by R.S.O. ch. 47, sec. 19, and the consolidated Rules of Practice; and that the plaintiff was entitled to tax the costs of the motion on the High Court scale.

Where an action is transferred from the County Court to the High Court of Justice by virtue of 54 Vict. ch. 14 (O.), under the provisions of Rule 1219, the costs of the proceedings after the case is transferred should be taxed upon the County Court scale, where the case falls within sub-sec. 4 of the Rule: *Struthers v. Green*, 14 P.R. 486.

Plaintiffs brought an action against defendant to restrain him by injunction from negotiating a promissory note for \$230 to compel delivery up of the note to plaintiff and for damages and for its detention. It was shown that the note was wrongfully withheld by the defendant. The court held that the action was one of tort, and not of contract, and could not have been brought in the County Court, and therefore awarded the successful plaintiffs costs on the High Court scale: *Plummer v. Caldwell*, 15 P.R. 144; *Robb v. Murray*, 16 A.R. 502, followed; *Johnston v. Kenyon*, 13 P.R. 24, distinguished.

Where an order was made which transferred a proceeding from the Surrogate Court into the High Court and contained a clause stating that in the event of the applicant for the order failing to establish his defence, his costs, if costs were allowed

him, should be on the Surrogate Court scale. By a consent judgment it was adjudged that the will which the defendant disputed was the last will of the testatrix and should be admitted to probate. It was also adjudged that the costs of all parties should be paid out of the estate, but judgment was silent as to the scale of such costs.

It was held on appeal from taxation that the defendant was bound by the order of the court, and his costs should be taxed on the Surrogate Court scale: *Re Forster, Battisby v. Wither- spoon*, 18 P.R. 65.

The costs of an application to the Master in Chambers under *Ontario Rule 1219*, to change the place of trial, in the County Court action, should be taxed on the County Court scale.

An action by simple contract creditors, the amount of whose claim was less than \$200, suing on behalf of themselves and all other creditors, to obtain judgment and equitable execution against the lands of the debtor conveyed to a third person in alleged fraud of creditors. It appeared that the land was worth more than \$200, and that the claims of execution creditors exceeded \$600 in the aggregate:—*Held*, that the amount of the subject matter involved exceeded \$200, and the costs should be taxed on the higher scale: *Hall v. Pilz*, 11 Ont. P.R. 449; *Dominion Bank v. Heffernan*, 11 Ont. P.R. 504; and *Forrest v. Laycock*, 18 Gr. 611, followed. *Morphy v. Fawkes*, 18 Ont. P.R. 24.

On an application for a direction to the Master as to the scale on which the costs of an action in the Queen's Bench under the former practice should be taxed, so far as the record showed, the action appeared to be within the jurisdiction of the County Court, and no certificate for costs on the Queen's Bench scale had been granted by the trial judge, but plaintiff contended that the evidence showed that the action was really one for the balance of an unsettled account, exceeding in the whole \$400, and, therefore, beyond the jurisdiction of a County Court:—*Held*, that in the absence of such a certificate the record alone and not the evidence should be looked at, and that under sec. 62 of the A.J. Act R.S.M., ch. 1, only County Court costs should be allowed to the plaintiff, and the defendant was entitled to set off the difference in his costs of defence between the Queen's Bench and County Court scales: *Miller v. Beaver Mutual Fire Ins. Co.*, 15 U.C.C.P. 75, followed; *Allan v. Clougher*, 12 Man. R. 327.

Under sec. 23, sub-sec. 8 of R.S.O., ch. 55, a County Court can give a judgment for nominal damages and grant an injunction in an action for trespass to land where the value of the land does not exceed \$200. A counter-claim upon which no relief is given can make no difference as to the jurisdiction of a court, and semble also that a judgment declaring a right can be given in a County Court by virtue of sub-sec. 13 of sec. 23 R.S.O., ch. 55, where an action within the competency of a County Court was brought in the High Court the successful plaintiff was allowed costs on a County Court scale, with a set-off to the defendants of the excess of their costs over County Court costs: *Fitchett v. Mellow*, 18 Ont. P.R. 161.

SECURITY FOR COSTS.

Security for costs may be ordered where by law or by the practice a party has heretofore been entitled to obtain security for costs, and without restricting the generality of this provision, also in the following cases:—

- (a) Where the plaintiff resides out of Ontario.
- (b) Where the plaintiff is ordinarily resident out of Ontario, though he may be temporarily resident within Ontario.
- (c) Where the plaintiff has brought another action or proceeding for the same cause which is pending in Ontario or in any other country.
- (d) Where the plaintiff or any person through or under whom he claims has had judgment or order passed against him in another action or proceeding for the same cause in Ontario or in any other country with costs, and such costs have not been paid, and the court or a judge may make such order for security for costs and staying proceedings until security is given as may seem just. See Rules of 23 June, 1894, 1377; Rules of 1 Jan., 1896, 1498. *Ontario Rule 1198*.

(1) Where it appears by the writ of summons, notice, or other proceeding by which a cause or matter is commenced, or by an indorsement thereon that the plaintiff resides out of Ontario, the order may be obtained on præcipe after appearance by the defendant applying therefor, pursuant to any such writ of summons.

(2) The order may be according to Form No. 95, and shall require the plaintiff, within four weeks from the service of the order, to give security in \$400 for the defendant's costs of the action, and shall direct that all further proceedings be stayed in

the meantime, and that in default of such security being given the action shall be dismissed with costs against the defendant obtaining the order unless the court or judge upon special application for that purpose otherwise orders. Con. Rule 1242; Rules 23 June, 1894, 1376.

(3) In actions in the County Court the amount of the security shall be \$200. *New Ontario Rule 1199.*

Where the plaintiff sues as an informer or seeks to recover any penalty given to an informer or person who sues for the same, under a statute or law by which a 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 sued may apply to the court or a judge for security for costs upon affidavit made by the applicant showing that the action is brought to recover a penalty, and that in his belief the plaintiff or informer is not possessed of property sufficient to answer the costs of the action in case a judgment is rendered in favour of the defendant, and that he (the applicant) has a good defence to the action upon the merits as he is advised and believes, and the court or judge may make such order for the giving of security for costs by the plaintiff or informer, according to the practice in cases where the plaintiff resides out of the province, and for the staying of the proceedings until security is given as may seem just. *Ontario Rule 1200.*

In all cases in which security for costs may be ordered, 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 judge may direct. *Ontario Rule 1201.*

The court or judge may by the order for security or by any subsequent order, require the security to be furnished within the time to be limited, and may stay all further proceedings in the meantime, and in the case of a plaintiff required to give security, may direct that in default of the security being given, the action shall be dismissed as for want of prosecution with costs as against the defendant entitled to security, unless the court or a judge, upon special application for that purpose, otherwise orders. *Ontario Rule 1202.*

Where an order for security for costs provides that, in default of security being given, the cause or matter shall be dismissed with costs against a defendant, the court or a judge upon default being made in giving security pursuant to the

order, may, upon *ex parte* application, order that the cause or matter be dismissed with costs against such defendant. *Ontario Rule 1203.*

Where security for costs is ordered, proceedings in the action shall be stayed from the service of the order, until the security is given, and, if given by bond, until the bond is allowed. *Ontario Rule 1204.*

Unless the court or a judge otherwise directs, a bond to be given as security for cost shall be given to the parties or persons requiring the security, and not to the officer of the court, and shall be executed by two sufficient sureties. *Ontario Rule 1205.*

Upon filing a bond for security for costs with affidavits of execution and justification with the proper officer either party may apply to the court or a judge to allow or disallow the bond; and in case no application is made to disallow the same within fourteen days after notice of filing it is served, the bond shall stand allowed. *Ontario Rule 1206.*

(1) Instead of giving a bond as security for costs a party may, without a special order, pay into court as such security a sum of money not less than half the penalty of the bond required.

(2) The party paying in the money shall, when paying the same in, state the purpose for which it is paid it, and shall forthwith serve a notice upon the opposite party specifying the fact and purpose of such payment. *Ontario Rule 1207.*

The amount of security, whether directed to be given by an order issued on *præcipe* or otherwise, may be increased or diminished from time to time by the court or a judge. *Ontario Rule 1208.*

(1) Where an action is brought by a plaintiff resident out of Ontario, and liable to give security for costs, who has indorsed the writ of summons with particulars of his claim in such manner that, upon motion under Rule 603, final judgment might be awarded, 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 603; but the order for security shall, nevertheless, in all other respects, have its full operation and effect.

(2) Such payment into court shall not prejudice any motion that may be made to set aside the order for security.

(3) In actions in the County Court the amount of the partial security shall be \$25.

(4) Where, upon motion under Rule 603, the plaintiff is awarded judgment for a portion only of his claim, he may issue the judgment and execution thereunder, but subject to clause (2) of this rule, shall not take any other proceedings in respect to the residue of his claim until the order for security has been fully complied with. *Ontario Rule 1209.*

A bond given for security for costs may be delivered up for cancellation or suit upon consent of the solicitors in the cause without order. *Ontario Rule 1210.*

Where money has been paid into court as security for costs or with a defence, it may be paid out to the party entitled thereto on the consent of the solicitors in the cause or matter without order. *Ontario Rule 1211.*

Where it appears by the statement of claim, notice, petition or other proceeding by which an action or matter is instituted, or by an indorsement thereon, that the plaintiff resides out of Manitoba, 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 \$200 for the defendant's costs of the action, staying all further proceeding 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. *Manitoba Rule 972.*

*Additional Cases in Which Defendant may Obtain Security
for Costs.*

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 the 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 Manitoba or in any other country, or that he has judgment or order passed against him in said 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. *Manitoba Rule 973.*

Time for Giving Security.

(1) Where a defendant in any action is entitled to obtain security for costs from the 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.

(2) 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.

(3) The time limited by any such order for giving any such security may be extended by the court or any judge, either before or after the expiration of any such time, and an order dismissing the action for not giving security may be discharged and the action reinstated, if it shall seem just and on such terms, if any, as may be imposed. *Manitoba Rule 976*. See *Caston v. Scott*, I., 117 (Manitoba); *Dobson v. Leask*, XI., 636 (Manitoba); *Evans v. Boyle*, V., 152 (Manitoba); *Carruthers v. Waterous*, IV., 402 (Manitoba); *Osborne v. Inkster*, IV., 399 (Manitoba). As to further security see *Charlebois v. G. N. C. Ry. Co.*, IX., 60 (Manitoba); *Bell v. London*, 9 P.R., followed; *Beers v. Collesler*, 3 B.C.R. 79; *Cowan v. Patterson*, 3 B.C.R. 353.

The *Nova Scotia Rules* in reference to security for costs are as follows:

(1) Security for costs may be ordered where by law or by the practice a party has heretofore been entitled to obtain security for costs and without restricting the generality of this provision, also in the following cases:

(a) Where the plaintiff resides out of Nova Scotia.

(b) Where the plaintiff is ordinarily resident out of Nova Scotia, though he may be temporarily resident within Nova Scotia.

(c) Where the plaintiff has brought another action or proceeding for the same cause which is pending in Nova Scotia, or in any other country.

(d) Where the plaintiff or any person through or under whom he claims has had judgment or order passed against him in another action or proceeding for the same cause in Nova Scotia or in any other country with costs, and such costs have not been paid and the court or a judge may make such order for security for costs and staying proceedings until security is given as seems just.

(2) Where it appears by the writ of summons, notice or other proceeding by which a cause or matter is commenced, or by an indorsement thereon, that the plaintiff resides out of Nova Scotia, the order may be obtained *ex parte* after appearance by the defendant applying therefor pursuant to any such writ of summons.

(O.) 1897, rr. 1198, 1199, part.

See *Atholl v. Williamson*, 1 N.S.D. 171 (Nova Scotia); *McDougall v. Geldert*, James 59 (Nova Scotia); *Harrison v. Helton*, 1 N.S.D. 22 (Nova Scotia); *Eaves v. Darling*, 4 R. & G. 128 (Nova Scotia); *Card v. Weeks*, 4 R. & G. 93 (Nova Scotia).

Amount of Security for Costs.

In any cause or matter in which security for costs is required the security shall be of such amount and be given at such times and in such manner and form as the judge directs. (E. 981.) (N.S.)

Bond to the Party For Security.

Where a bond is given as security for costs, it shall, unless the court or a judge otherwise directs, be given to the party or person requiring the security and not to an officer of the court. (E. 982.) (N.S.)

In any cause or matter in which security for costs is required the security shall be of such amount and be given at such times and in such a manner and form as the court or a judge shall direct. *British Columbia Rule 756.*

Bond to be Given to Suitor.

Where a bond is to be given as security for costs it shall, unless the court or a judge shall otherwise direct, be given to the party or person requiring the security and not to an officer of the court. *British Columbia Rule 757.*

Set-Off For Damages or Costs.

A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought. *British Columbia Rule 761.* See also Rule 742.

SECURITY FOR COSTS—WHEN ORDERED.

The profession generally have experienced considerable difficulty with the question as to when a party may be ordered to give security for costs, and a great deal of litigation has thereby been occasioned, and costs incurred through lack of knowledge of the elementary principles applicable.

The rule governing this subject in the Consolidated Rules of Practice does not change the law, but simply affirms what the law was at the time the rule was promulgated, or extends the application of the principles of giving security for costs in some cases, and does not in any way limit the right to security for costs to the cases mentioned in the rule, but gives the right to security in the cases enumerated, in addition to any others a party has been formerly entitled to claim.

Residence out of the jurisdiction is one of the most familiar grounds for ordering security to be given, but a plaintiff is not *prima facie* liable to furnish security because he resides out of the jurisdiction of the court. Where it is made apparent to the court that the defendant has no defence to the action, security will not be ordered, and if a *præcipe* order has been taken out it can be set aside on proper evidence. Where one of several plaintiffs, suing on a joint claim, reside out of the jurisdiction, security would not formerly have been ordered, but since the change in the rules, whereby all the plaintiffs are not now liable for the whole cost incurred, security will be ordered by a plaintiff residing out of the jurisdiction. A plaintiff, who at the commencement of an action, resides within the jurisdiction, but afterwards permanently removes, may now be ordered to give security not only for the costs incurred after removal, but also from the commencement of the action.

It was the former law that a plaintiff who was, in fact, within the jurisdiction, but whose actual domicile was without the jurisdiction, could not be ordered to give security, but since the rules now governing the subject, temporary residence within the jurisdiction is not sufficient ground of defence to an application by the defendant for the plaintiff to furnish security.

Another ground under the rule where the plaintiff may be ordered to furnish security is where the plaintiff has brought another action or proceeding for the same cause in Ontario or elsewhere, and the action has not been finally adjudicated upon. It must be shown on the application for security that the

actions are in fact the same, and if they are in any way different, but arise from the same transaction, security will not be ordered.

Where the party is in default in payment of costs in another action for the same cause, security will be ordered. It was the former practice that all proceedings would be stayed in the second action until the costs of the first action were paid.

It may be noticed that it is not necessary that the action be between the identical parties of the original suit; it is sufficient if the plaintiff sues and claims the same relief although other parties are added.

In addition to the cases enumerated in the rule there are several others where it is now well settled by practice security will be ordered. The case where the plaintiff is suing, and it can be shown that he has no interest in the subject matter of the litigation, but the action has been brought in the interest and for the benefit of some other party, is one directly in point. The poverty of the plaintiff, or the fact that he is insolvent, is no ground for asking for security. Even though the plaintiff is an insolvent corporation, and a receiver has been appointed of its assets, that will make no difference.

Persons suing for penalties under any statute or law, either for his own benefit and partly for the Crown, may be ordered to give security for costs where it can be shown that the informer has not sufficient property to answer the costs in the action. In the event of judgment being given for the defendant, the defendant must also swear that he has a good defence to the action upon the merits. Where the defendant is a corporation aggregate, however, it has been held that they are not entitled to obtain security under the rules.

By statute, in actions of libel, the defendant may, after the statement of the claim is filed, obtain an order for security upon notice, and upon an affidavit stating that the defendant is not possessed of property sufficient to answer the costs of the action in case a verdict is given in favour of the plaintiff. He must also swear that he has a good defence on the merits, and that the statements complained of were published in good faith, and that the grounds of the action are trivial.

If, however, the alleged libel involves a criminal charge, the defendant is not entitled to security for costs, unless he can satisfy the court that the action is trivial or frivolous, or that the article complained of was published in good faith, and that

there was reasonable ground to believe that the same was for the benefit of the public, and that the publication took place in mistake or misapprehension of the facts, and that there was a public retraction. On such an application the judge is not to try the case on the merits, and affidavits in answer will not be received.

Where the libel complained of is against a candidate for public office, it would appear that the defendant is not entitled to security for costs.

By statute, in actions by women for slander, adultery, fornication, or concubinage, after the statement of claim is filed, the defendant may apply to the court or a judge upon similar material as in actions for libel and obtain an order for security for costs. In this class of actions, however, it is not sufficient for the defendant simply to swear that he has a good defence; the nature of the defence must be fully disclosed.

Where proceedings are brought against a police magistrate or a justice of the peace, or any other officer or person fulfilling any public duty, security may be ordered at any time after the service of writ or other proceedings, on notice to the plaintiff and upon affidavit stating the nature of the action and of the defence, and also showing to the satisfaction of the court or a judge that the plaintiff is not possessed of sufficient property to answer the costs of the action in case a verdict or a judgment should be given against him, and that he has a good defence and that the grounds of the action are trivial or frivolous. The merits of the action will not be tried on the application for security, but a *prima facie* defence must be established.

Security may also be ordered where parties reside out of the jurisdiction and come into the Master's office to prove a claim as creditors or otherwise; also, in garnishee proceedings and in interpleader actions either party may be ordered to give security in the same way and for the same cause as a plaintiff in an ordinary action.

Parties who place themselves substantially in the position of a plaintiff, and who reside out of the jurisdiction, will be ordered to give security. For example, where a defendant resides out of the jurisdiction and makes an application to be made a party and asks for substantial relief.

Also, where the defendant resides out of the jurisdiction and counterclaims, and the counterclaim is really a cross and independent action, and has no connection with the original

claim. Where, however, a foreign defendant counterclaims for a breach by the plaintiff of the contract sued on, security will not, as a rule, be ordered, as the court has a discretion to refuse the application.

Where, after security for costs has been ordered, the plaintiff comes to reside within the jurisdiction of the court, he must clearly establish in order to have the order set aside that his coming within the jurisdiction is not for the purpose of evading the obligation to find security but is of a more permanent character: *Cordingly v. Johnson*, 11 Man. R. 4.

The amount to be given for security is in the discretion of the court: *McLean v. Inland Construction and Development Co.*, 3 B.C.R. 307.

Where the plaintiff resides outside the jurisdiction, but has an unsatisfied judgment against the defendant, he will not be ordered to give security: *Horsfall v. Phillips*, 3 B.C.R. 352.

A married woman who is residing temporarily out of the jurisdiction, but whose husband resides within the jurisdiction, will not be ordered to give security for costs: *Conan v. Cuthbert*, 3 B.C.R. 373.

The party moving for an interpleader order, whether plaintiff or defendant, should, if resident outside the jurisdiction, give security for costs to the opposite party. *Swain v. Stoddard*, 12 P.R. 59, approved. *Belmonte v. Aynard*, 4 C.P.D. 221, distinguished. *Re Ancient Order of Foresters and Castner*, 14 P.R. 47.

In setting aside an order for security for costs the Master in Chambers has power to impose terms, and the imposing upon the plaintiff of the payment of the costs of obtaining the order for security and of the appeals therefrom and of the application; this was held competent and proper: *Lea v. Lang*, 18 P.R. 1.

In *Slattery v. Dun & Co.*, 18 P.R. 168, it was held that a printed paper issued by the defendants who conducted a mercantile agency for the purpose of giving subscribers information is a "newspaper," and "printed for sale," within the meaning of sec. 1 R.S.O. ch. 68, and that the publishers in an action for libel brought against them, are entitled to the benefits of the provisions as to security for costs contained in sec. 1.

A sheriff acting under a writ of execution is not entitled to the benefits of R.S.O. ch. 89, sec. 1, and cannot, therefore, obtain any order for security for costs in an action brought against him for negligence in making a seizure under the writ : *Creighton v. Sweetland*, 18 P.R. 180; *McWhirter v. Corbett*, 14 U.C.C.P. 203.

Where the plaintiff, who lived outside the jurisdiction, made a motion to set aside the præcipe order for security for costs on the ground that he owned real estate within the jurisdiction sufficient to secure the costs. The affidavit which the plaintiff used in support of the motion alleged, that half a section of land in the province was vested in him, and that according to the best of his knowledge, information and belief, it was worth \$3,000, and that it was unencumbered, as he was informed and verily believed.

In this action it was held that such an affidavit did not comply with the Rule 500 of the Queen's Bench Act, 1895, as it did not give the plaintiffs grounds of belief, and that there was not sufficient evidence to support the plaintiff's application : *Dobson v. Leask*, 11 Man. R. 620.

In *Vanalstine v. Hart*, Kingston Provincial Election, Vol. 2, Ontario Election Cases, a motion was made to set aside a cross petition that as no security for costs was given the cross petition was irregular.

Osler, J.A., gave judgment dismissing the motion with costs, holding that under sec. 13 of the Controverted Election Act R.S.O. 1897, ch. 10, security for costs is required only in the case of the original petition, and not in that of a cross petition.

The plaintiff at a trial in the High Court obtained a judgment for damages and costs; on appeal by the defendants to the Court of Appeal, the appeal was dismissed with costs. The defendants then appealed to the Supreme Court of Canada and gave the security required by sec. 46 of Supreme and Exchequer Courts Act, but no other security. The plaintiff thereupon made an application for payment out of the court to them of the sum of \$200 paid into court by the defendants as security for the costs of their appeal to the Court of Appeal.

It was held that proceedings to enforce the plaintiff's High Court judgment were not stayed, and that the court was not bound to pay out to the plaintiff the sum paid in by the defendants; the judgment of the Court of Appeal being stayed pending the result of the appeal to the Supreme Court, as the

Supreme Court might reverse the judgment, and for that reason the money should not be paid to the plaintiff, unless the plaintiff's solicitors would undertake to repay the money in the event of the Supreme Court reversing the judgment of the Court of Appeal: *Rombough v. Balch*, 19 P.R. 123.

Where party returns to jurisdiction after order made see *Cordingly v. Johnson*, 11 M.R. 4; also *Howard v. Howard*, 30 L.R. Ir. 340; *Westenberg v. Mortimore*, 10 C.P. 438; *Dobson v. Leask*, 11 M.R. 626.

Under the power given by *Ontario Rule 826* security for costs of appeal to the Court of Appeal was dispensed with. It appeared that the appellant was an infant by the next friend, and unable, on account of poverty, to procure security. It was also shown that her action was dismissed at the trial, the judge following a reported decision of the Divisional Court, with which decision the appellant would be met if she appealed to that court, which court of course she could appeal to without giving security. Moss, J.A., in giving judgment, stated, after referring to the fact that unless the Rule was relaxed the plaintiff would be deprived of an appeal: "In view of this, and considering that the plaintiff is an infant—one of a class usually considered privileged as suitors—I think she ought to be relieved of her present difficulty to the extent of placing her in the same position with respect to security as if she were appealing to a Divisional Court. In doing this I do not consider that I am running counter to any previous decision." The costs of the application were made costs in the appeal. See *Sherlock v. Powell*, 18 P.R. 312; *Roberts v. Coughlin*, 18 P.R. 94; *Thuresson v. Thuresson*, 18 P.R. 414; *Fahey v. Jephcott*, O.L.R. (1901) Vol. I., 198.

An infant residing out of the jurisdiction bringing an action for administration by her mother, who resides within the jurisdiction, cannot be required to furnish security for costs: *Roberts v. Coughlin*, 18 P.R. 14.

No security for costs is required on a motion or appeal to the Divisional Court. This is under the provisions of *Ontario Rule 825*. Where the plaintiff, however, has acquired a foreign domicile after the judgment dismissing his action without costs appeals to the Divisional Court, the defendant is entitled to security and can obtain an order for security: *Tanner v. Weiland*, 19 P.R. 149; *Arnold v. Van Tuyl*, 30 O.R. 663, distinguished.

Where the judgment of the High Court is against a defendant, and he is appealing to the Court of Appeal, he is not entitled to an order requiring the plaintiff to give security for costs. Where the defendants would have been entitled to such an order at the commencement of the action, but did not take it because they feared that it would be set aside owing to the plaintiff, though resident out of the district, owing property within it, an application after judgment, upon the ground that the plaintiff had ceased to own property within the jurisdiction, was refused by a judge of the Court of Appeal: *Exchange Bank v. Barnes*, 11 Ont. Pr. 11, followed; *Small v. Henderson*, 18 Ont. Pr. 314.

Upon an application for security for costs made under R.S.O. ch. 57, sec. 9, by the defendant in an action for an alleged libel contained in a public newspaper, the plaintiff desired to read and have the benefit of an affidavit made by himself contradicting the statements in the affidavit of the agent of the defendants on which the motion was based, and contended that the object was not to try the facts on affidavits, but to show that the agent had not knowledge of the facts, that many statements made by him were not true, and therefore that his affidavit was not such as required by sec. 9:—*Held*, that the plaintiff's affidavit could not be read or used upon the application: *Bartram v. London Free Press Printing Co.*, 18 Ont. P.R. 11.

Summons for security of costs from the plaintiff, a company incorporated in the State of Washington and having its head office in Seattle. The company owned a steamer running between Seattle and Victoria, had an office in Victoria managed by a freight and passenger agent who devoted his whole time to the business of the company in Victoria, and who was paid a salary by the company. Rent and all office expenses were paid by the company, which was not licensed or registered in British Columbia.

Held, that the company was a foreign company within the meaning of sec. 144 of the Companies Act, and was bound to give security for costs: *La Bourgogne* (1899), P.L., and (1899), A.C. 431, considered; *Alaska v. Macaulay*, 36 Canada Law Journal 686.

It is not a ground for refusing to order a plaintiff resident out of the jurisdiction to give security for the defendant's costs, that the defendant himself resides out of the jurisdiction. Rule 1198 provides that security for costs may be ordered, "(b)

where the plaintiff is ordinarily resident out of Ontario, though he may be temporarily resident within Ontario":—*Held*, that these words refer to a person who, under ordinary conditions and circumstances, is habitually present in some country or place out of Ontario, and that a person who has no home, and whose calling causes him to be as much in Ontario as elsewhere, cannot be said to come within the branch of the Rule. The discretion which the court has in making or withholding an order for security for costs should be exercised against making an order which would shut the doors of the court against a plaintiff: *Denier v. Marks*, 18 Ont. P.R. 465.

Con. Rule 826 (Ont.) is applicable to an appeal under sec. 39 (2) of the Mechanics' Lien Act, R.S.O. ch. 153, by the respondent in the court below from the order of a Divisional Court reversing the judgment upon the trial of a mechanic's lien action, where the amount in question is more than \$100, and not more than \$200; and therefore security for the costs of such an appeal must be given, unless otherwise ordered: *Sherlock v. Powell*, 18 Ont. P.R. 312.

In actions for libel, contained in a newspaper, by R.S.O. ch. 68, sec. 10, the defendants may at any time after the plaintiffs have filed their statement of claim, make an application for security for costs. Defendants' affidavit in support of the application should show the nature of the action, and defence should state that the plaintiff is not possessed of sufficient property to answer the costs of the action, in case a verdict or judgment is given against him. It should also state that the defendants have a good defence on the merits, and that the statements complained of were published in good faith, and that the ground of action is trivial and frivolous. Where the defendant makes out a *prima facie* case for security, an order will be made. The judge is not to try the merits of the case: *Lennox v. Star*, 16 P.R. 488; *Bartram v. London Free Press*, 18 P.R. 11; *Swain v. Mail*, 16 P.R. 132; *Graeme v. Globe*, 14 P.R. 72.

If the alleged libel involves a criminal charge, the defendant is not entitled to security for costs unless he satisfies the court or judge that the action is trivial or frivolous, or that the article was published in good faith, and that there was reasonable ground to believe that the publication was for the public benefit, and that the publication took place in mistake, or misapprehension of the facts, and that there was an equally public retraction. See *Smith v. Stephenson*, 17 P.R. 374; *Georgian Bay v. World Publishing Co.*, 16 P.R. 320.

In *Conmee v. Weidman*, 16 P.R. 239, it was held that where the libel complained of is against a candidate for a public office in Ontario, the application by the defendant for security will not be entertained.

An appeal by the plaintiff from an order requiring him to give security for costs upon the ground that the costs of a former action, brought by plaintiff against defendant for the same cause, were unpaid, was dismissed by a judge in chambers, and a further appeal to a Divisional Court, which held (17 Ont. P.R. 203) that the plaintiff could not answer the application for security by showing that the former action was brought without his authority. The costs of the appeals were made payable to the defendant in any event. The plaintiff, upon application in the former action, then had the judgment for costs against him therein set aside, upon the ground that the action was brought without his authority; and afterwards applied to set aside the order for security for costs:—*Held*, that the Master in Chambers, in setting aside the order for security for costs had discretion to impose terms, and the terms imposed, viz., payment by the plaintiff of the costs of obtaining the order for security, of the appeals therefrom, and of the application itself, were competent and proper. As to the form of the order, a dismissal of the action in the event of security not being given within a limited time, was authorized by *Con. Rules* (1888) 1243 and 1246: *Lea v. Lang*, 18 Ont. P.R. 1.

Upon an appeal by the defendants to the Court of Appeal from an order of a Divisional Court reversing the judgment at the trial and ordering judgment to be entered for the plaintiffs for possession of land with costs:—*Held*, that the fact that the appellants had no means or money or resources other than the land in question, and were unable to procure sureties, was not a ground for dispensing with security for costs of the appeal. If the defendants had a lien on the land for a sum exceeding \$400 for improvements made by them, in the belief that the land was their own, security might be dispensed with or the lien charged by way of security. But in this case the plaintiffs would be entitled to mesne profits as against the improvements, and the defendants had mortgaged the land for the money laid out, and the lien, if any, was the mortgagee's: *Thuresson v. Thuresson*, 18 Ont. P.R. 414.

An assignee in insolvency *bonâ fide* suing in discharge of his duty as such assignee, will not be required to give security for costs on the ground that he is without means and not beneficially interested in the suit: *Vars v. Gould*, 8 P.R. 31.

Where it appeared that a large number of persons had an interest in the settlement of the question involved in the suit and they put forward as plaintiff in the suit one of their number who was shown to have been insolvent some years before the commencement of the suit and did not appear to have accumulated any property since his insolvency, security for costs was ordered: *Hathway v. Doig*, 9 P.R. 91.

The usual præcipe order for security for costs had been taken out by the defendant and duly complied with by the plaintiff. Subsequently the cause was partially heard before Ferguson, J., but was adjourned for three months owing to the judge being required to open another sittings of the court. The defendant thereupon seeing that the costs far exceeded the security given applied for an order for further security. It was not shown that the defendants could not have foreseen that the \$400 would not cover the costs. *Boyd, C.*, affirmed the judgment of Mr. Stephens, refusing further security: *Bell v. Landon*, 9 P.R. 100. See S.C., pp. 161, 162. See *North v. Fisher*, 10 P.R. 582.

Security for costs was ordered in an action brought by a ratepayer, for himself and other ratepayers, to restrain the delivery by the corporation of certain debentures to a railway company, where it appeared from the examination of the plaintiff that he was financially incompetent to pay the defendant's costs, and was only interested to an insignificant extent; and where he swore that he expected certain persons named to pay his costs and to protect him should the case go adversely, that he did not want to spend any money on the prosecution of his own right in the matter, and that he did not know who instructed the plaintiff's solicitor: *Clark v. St. Catherines*, 10 P.R. 205.—Dalton, Master.

Where several parties suffer damage from the acts of the defendant, and they agree among themselves to share the costs of a test action by one of them to establish his rights, security for costs will not be ordered even though such a plaintiff is insolvent: *Clark v. St. Catherines*, 10 P.R. 205, distinguished; *Clark v. Rama Timber Transport Co., Limited*, 10 P.R. 384.—Dalton, Master.—Osler

SET-OFF OF COSTS.

The costs of a motion in term are interlocutory costs, and the party to whom they are awarded is entitled to have them set-off against the judgment of the opposite party obtained in the same cause: *Young v. Hobson*, 8 P.R. 253.

Held, that the costs of a motion made after judgment might be treated as interlocutory for the purposes of a set-off under Reg. Gen. 52 (Consolidated Rule 1205). *Ib.*

In an action in a County Court, tried by a judge without a jury, judgment was given for \$36, no order being made as to costs:—*Held*, that no costs could be awarded, and a mandamus was granted to the County Court clerk to enter up judgment for the plaintiff with costs, and without allowing defendant to set-off against the judgment the difference between County and Division Court costs: *Re Great Western Advertising Co. v. Rainer*, 9 P.R. 494.

The plaintiff claimed \$1,205, the balance of the contract price for work done, and the defendant claimed that by reason of imperfect work the balance should be reduced by \$900. The defendant was allowed \$266.54 in respect of his claim for reduction, and the plaintiff, therefore, recovered \$938.46:—*Held*, that what the defendant claimed was neither a set-off nor a counter-claim; and, as the plaintiff had substantially succeeded, he should get the general costs of the action and reference, less the costs incurred by the defendant in establishing the items of improper work on which he succeeded: *Cutler v. Morse*, 12 P.R. 594, followed; *Sanderson v. Ashfield*, 13 P.R. 230.—*Boyd*. See *Brown v. Nelson*, 11 P.R. 121, p. 367; *Weaver v. Sawyer*, 16 A.R. 422, p. 378; *Foster v. Viegall*, 13 P.R. 133, p. 378; *Bertram & Co. v. Massey Manufacturing Co.*, 13 P.R. 184, p. 380.

In every case in which judgment is entered without trial, or the decision of a court or judge, or order as to costs, and where the amount of, or relief awarded by, the 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 competence of the County or Division Court, then the taxation shall be on the scale of fees in such court. *Con. Rule 1174. Ontario Rule 1133.*

There is no set-off of costs contemplated by this rule.

In *Andrews v. London*, 12 P.R. 44, a consent judgment was taken for \$1 to be altered by a reference if necessary, costs to abide the event. This was held to be a judgment without trial and without the rule. The taxing officer in order to determine the proper scale of fees must examine the pleadings, and may, if necessary, demand the facts to be substantiated by affidavit: *White Sewing Machine Co. v. Belfry*, 10 P.R. 64; *Real Estate Loan Co. v. Molesworth*, III, 176 (Manitoba).

Where, upon taxation, a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff. *British Columbia Rule 784.* See also *British Columbia Rule 761.*

In any case in which, under the next preceding regulation, or any other rule of court, or by the order or direction of a court or judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing authority 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 such authority may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered. *Nova Scotia Rule 14.*

See *Ontario Rules 1133 and 1164.* See *Manitoba Rule 948.*

Where the judgment in an action awarded costs to the plaintiff against the chief defendant and gave the other defendants costs against the plaintiff, and the judgment contained no direction as to setting off costs, the defendants were all defended by the same solicitor. It was held that the question of setting off costs was in the discretion of the taxing officer, and that the taxing officer rightly exercised his discretion in refusing to set off the costs ordered to be paid to the plaintiff by the chief defendant against the costs ordered to be paid by the plaintiff to the other defendants: *Fleet v. Way*, 14 P.R. 312.

The plaintiffs, having recovered judgments for large sums against the defendants, sought to set-off such sums *pro tanto*, against certain costs adjudged to be paid by the plaintiffs to the defendants, but the solicitors for the defendants asserted a lien for their costs upon a judgment for these costs recovered by their clients against the plaintiffs. The defendants themselves were worthless, but there was another source from which it was probable that the defendants' solicitors would obtain payment of their costs:—*Held*, that this was not enough; if the solicitors had a certainty of being able to recover their

costs from another source the set-off could be ordered, because the lien would then be unnecessary; but it being merely a probability, the set-off could not be ordered without its operating to the prejudice of the solicitor's lien, for, should that source fail, the lien could not be replaced; and, therefore, under Rule 1165, the set-off should not be ordered: *Molsons Bank v. Cooper*, 18 Ont. Pr. 396.

By the judgment in an action costs were awarded to the plaintiff against the chief defendant, and to the other defendants against the plaintiff, without any direction as to setting off costs, and the plaintiff's solicitor asserted a lien upon the costs awarded to his client against the chief defendant. The defendants all defended by the same solicitor:—

Held, that, under Rule 1204, the question of setting off costs was in the judicial discretion of the taxing officer, and that discretion was rightly exercised by the officer in refusing to set-off the costs ordered to be paid to the plaintiff by the chief defendant against the costs ordered to be paid by the plaintiff to the other defendants. Construction of Rules 1204 and 1205.

The older decisions as to set-off are not applicable; *Flett v. Way*, 14 P.R. 312.

The Master in Chambers, having no jurisdiction to decide a demurrer, has none to determine the cost of it: *Jones v. Miller*, 16 P.R. 92.

Where a director, who was also president, of a company was appointed by the board of directors and acted as solicitor for the company:—

Held, in winding-up proceeding, that he was entitled to profit costs in respect of causes in court conducted by him as solicitor for the company, but not in respect of business done out of court, and was entitled to set-off the amount of such costs against the amount of his liability as a shareholder.

Decision of the Master in Ordinary reversed: *Cradock v. Piper*, 1 Macn. & G. 664, followed; *Re Mimico Sewer Pipe and Brick Manufacturing Co.*, *Pearson's Case*, 26 O.R. 289. See also *Barton v. Baldwin*, R.E.D. 392, *Nova Scotia*.

Where the plaintiff succeeds on his claim, and the defendant succeeds on his counter-claim, the costs should be taxed as far as possible as though they were two actions, in one of which the plaintiff succeeds and in the other the defendant succeeds. The plaintiff is entitled to the costs applicable to his claim, and the

defendant to those applicable to his counter-claim. The defendant's costs commence with instructions for defence and counter-claim: *Sharpnel v. Laing*, 20 Q.B.D. 334.

Where the action is tried with a jury, and both claim and counter-claim are dismissed with costs, the plaintiff must pay the general costs of the action, the defendant only those incurred by the counter-claim: *Saner v. Bilton*, 11 C.D. 416.

The plaintiff brought a County Court action against the defendant to recover \$140, balance alleged to be due from the defendant for the sale of the chattel.

The defendant paid into court the sum of \$95 in full, which the plaintiff accepted in due course. On the application of the defendant, the judge of the County Court made a summary order allowing the defendant to set off his costs on the County Court scale in the excess of such costs as he would have incurred if the action had been brought in the Division Court, against the costs of the plaintiff and order, and gave the defendant liberty to enter judgment and issue execution for the excess, if any, over the above costs of the plaintiff.

It was held that the plaintiff was entitled to costs on the County Court scale, irrespective of the amount paid into court and accepted by him in full of his claim. The plaintiff being entitled to his costs on the County Court scale by the provision of the Rule 425, they were not subject to the discretion of the judge, as Rule 425 is not qualified by Rule 1130. Under sec. 52 R.S.O. ch. 55 (The County Court Act), as the judge's order was in its nature final, an appeal would lie: *Babcock v. Standish*, 19 P.R. 195.

SETTLEMENT OF ACTION.

After judgment had been recovered by the plaintiff against the defendants for \$550 damages and for costs, and while an appeal was pending, the plaintiff and defendants, without the knowledge of the plaintiff's solicitors, made an agreement for settlement of the action upon the plaintiff being taken into the defendants' employment and paid \$150 in full of damages and costs. The plaintiff's solicitors asserted a lien for their costs which were unpaid, and gave notice thereof to the defendants before any money was actually paid over to the plaintiff:—*Held*, that the compromise made was not a collusive one, and the solicitors were therefore not entitled to an order upon the defendants for the payment of their costs; but, such costs amounting to more than \$150, that they were entitled to have

that sum for which the action was compromised, and which was to be treated as the fruits of the litigation, paid over to them in respect of their lien. *Held*, also, that a question arising between the plaintiff and his solicitors as to whether they were entitled to taxed costs as between solicitor and client, or to a percentage upon the amount recovered, could not be determined upon the motion to enforce payment by the defendants of the plaintiff's solicitors' costs, but had to be determined in another proceeding before the determination of such motion: *Walker v. Gurney-Tilden Co.*, 18 Ont. Pr. 274.

SEVERING DEFENCES.

In an action brought by a plaintiff against several defendants, in which the plaintiff fails and the defendants succeed in obtaining judgment against the plaintiff, and the defendants were represented by different solicitors, unless it can be clearly established that under the circumstances it was necessary that they should have severed defences, the taxing officers should tax the bill as though there was a general defence by one solicitor. In order to determine this, it will be necessary for the taxing officer to decide whether there was one defence common to all the parties or were the defences so antagonistic that it was clearly necessary for them to separate their defences. See *Balfour v. Drummond*, V., 242 (Man.); *McDonald v. Cunningham*, III., 39 (Man.).

One defendant agreed to save another harmless as regards the costs of an action. In the written retainer of the latter to his solicitors it was provided that the costs should be charged to the former defendant, the plaintiffs having been ordered to pay the costs of the defendants:—

Held, per Boyd, C., 16 P.R. 346, a proper case to allow two sets of costs, and that no disability existed on the part of the indemnified defendants to tax and recover his costs against the plaintiffs.

Jarvis v. Great Western R. W. Co., 8 C.P. 280, and *Stevenson v. City of Kingston*, 31 C.P. 333, distinguished.

Held, by the Divisional Court on appeal, that the indemnified defendant was not entitled to costs against the plaintiffs: *Jarvis v. Great Western R. W. Co.*, 8 C.P. 280, and *Stevenson v. City of Kingston*, 31 C.P. 333, followed; *Meriden Britannia Company v. Braden*, 16 P.R. 346, 410. Affirmed in appeal, 17 P.R. 77.

The practice of bringing an action for an amount due on a mortgage within the proper competence of the Division Court in the High Court by making a claim for possession of the land is one that must be carefully guarded, and except in cases clearly indicating the necessity for proceeding in the High Court, no costs will be given to the plaintiff. In this case where the amount claimed under a mortgage was within the proper competence of a Division Court, but the suit was brought in the High Court, and there were no circumstances showing the necessity for bringing it therein, no costs were allowed the plaintiff: *Vandewaters v. Horton*, 9 O.R. 548.

Although in this case the plaintiff was entitled to judgment of seizin, yet as there was no demand made, and the defendants were always ready and willing to assign the dower, the plaintiff was not entitled to costs: *Malone v. Malone*, 17 O.R. 101.

Where a question might have been raised by demurrer without the expense of a trial, no other costs or greater were taxed to the defendants than would have been taxed to them had they simply demurred to the statement of claim, and the demurrer had been decided in their favour: *Hepburn v. Township of Orford*, 19 O.R. 585 Q.B.D.

Where one of several persons beneficially interested under the will of a testator, without making proper inquiries into the conduct and dealings with the estate of the executors, instituted proceedings against them, and groundlessly charged them with misconduct, causing thereby much unnecessary costs and trouble. The court (Spragge, C.,) being satisfied with the conduct of the executors, refused to take the further administration and winding up of the estate out of their hands; and it being shown that all the other persons interested in the estate were satisfied with the conduct of the executors, ordered the plaintiff to pay the costs of the suit: *Rosebatch v. Parry*, 27 Chy. 193.

A count having been drawn so as to invite a demurrer, the demurrer was over-ruled without costs: *Smith v. Ancaster Township*, 45 Q.B. 86.

A summons for a writ to a Division Court was made absolute without costs, there being no meritorious defence: *Kinsey v. Roche*, 8 P.R. 515.

It not appearing that there was any good reason for filing a bill instead of proceeding to enforce an award in the usual way,

the court (Spragge, C.) refused to the plaintiff any costs other than such as he would have been entitled to had he proceeded to enforce the award under the statute: *Moore v. Buckner*, 28 Chy. 606.

Where the defendant, who had covenanted that only \$664 was due on a mortgage held by a building society on property purchased by plaintiff, and his answer admitted an error in the computation of the amount due to the society, and offered to pay the difference between the \$664 and what he alleged was the cash value of the mortgage and costs up to that time:—*Held*, that in the event of the society accepting present payment of the cash value, the defendant was entitled to his costs of suit, subsequent to answer: *Stark v. Shepherd*, 29 Chy. 316.

Costs not allowed where several motions depend really upon the same consideration, and there should have been only one motion. See *Monteith v. Walsh*, 10 P.R. 162.

See *Campbell v. McDougall*, 5 A.R. 503; *Stevenson v. Stevenson*, 28 Chy. 232; *In re Dean v. Chamberlin*, 8 P.R. 303; *In re Flint & Jellett*, 8 P.R. 361; *McCardle v. Moore*, 2 O.R. 229; *Merchants Bank v. Sparks*, 28 Chy. 108; *Simpson v. Horne*, 28 Chy. 1; *Purdy v. Park*, 9 P.R. 424; *Wansley v. Smallwood*, 11 A.R. 439, p. 366; *Beatty v. O'Connor*, 5 O.R. 731, 747; *Vandewaters v. Horton*, 9 O.R. 548, p. 353; *Snider v. Snider*; *Snider v. Orr*, 11 P.R. 140; *Latour v. Smith*, 13 P.R. 214, p. 386; *Fulton v. Vipond*, 13 P.R. 485, p. 380; *Re Allenby & Weir, Solicitors*, 13 P.R. 403.

Where two or more defendants defended by different solicitors under circumstances that by the law of the court entitles 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 defended by the same solicitor separate unnecessarily in their defences or otherwise, the taxing officer is without any special order to allow but one defence and set of costs. See *Ontario Rule 1162*.

A plaintiff who obtains judgment against several defendants who severed their defences is entitled to costs against them jointly. Each defendant is liable for costs of his separate defence, but is not liable for costs occasioned by the other: *Merchants' Bank v. Houston*, 7 B.C.R. 352.

In the *Township of Logan v. Kirk*, 14 P.R. 130, where the plaintiff corporation sued a contractor, one of his sureties, and the executors of a deceased surety, the three parties sued,

appeared by different solicitors. It was held that as the defendants were not liable in any joint character and it did not appear that the defences were severed for the purpose of increasing the costs, they were entitled to tax separate bills.

One defendant agreed to indemnify another as regards the costs of an action. In the written retainer given by the latter to his solicitor it was provided that the costs should be charged to the former defendant. The plaintiffs failed in their action and were ordered to pay the costs of the defendant.

It was held by the Divisional Court on appeal, and afterwards affirmed on further appeal, that the indemnified defendant was not entitled to costs: *Meriden Britannia Co. v. Braden*, 16 P.R. 346, 410; *Jarvis v. G.W.R.W. Co.*, 8 C.P. 280, and *Stevenson v. Kingston*, 31 C.P. 333, followed. See also *Melbourne v. Toronto*, 13 P.R. 346; *Lockhard v. Waugh*, 17 P.R. 269; *Re Isaac*, 75 L.T. 638; *Barrett v. Campbell*, 7 P.R. 150; *Boswell v. Coaks*, 36 Chy. D. 444. See DEFENDANTS SEVERING.

SHERIFF'S FEES.

Where any person liable on an execution is dissatisfied with the amount of poundage fees or expenses of execution claimed by a sheriff, the court or a judge may, before or after payment therefor, upon the application of such person, upon notice to the sheriff, if the amount appears to be unreasonable notwithstanding that it is according to the tariff, reduce the same or order the same to be refunded upon such terms as may seem just. See *Ontario Rule 1192*. See *Manitoba Rule 964*.

Upon the settlement of an execution, in whole or in part, by payment, levy or otherwise, the sheriff claiming any fees, poundage, expenses or remuneration which have not been taxed, shall, upon being required by either party and on payment or tender of the expenses of taxation and 25 cents for a copy of his bill in detail (which he shall be bound to render), have his fees, poundage, expenses or remuneration, as the case may be, taxed by the proper taxing officer of the county wherein such sheriff keeps his office. See *Ontario Rule 1193*. See *Manitoba Rule 965*.

The taxing officer shall tax the bill and give, when requested, a certificate of the taxation. See *Ontario Rule 1194*. See *Manitoba Rule 966*.

A sheriff shall not, without taxation, collect any fees, costs or poundage or expenses after he has been required to have the same taxed. See *Ontario Rule 1195*. See *Manitoba Rule 966*.

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, shall examine the bill, whether such taxation is opposed or not, and satisfy himself that the items charged in such bill are correct and legal and strike out items charged for unnecessary services. See *Ontario Rule 1196*. See *Manitoba Rule 968*.

A party dissatisfied with the taxation may appeal therefrom as in ordinary cases of taxation between party and party. See *Ontario Rule 1197*. See *Manitoba Rule 969*.

The fees and allowances to be taken and received by sheriffs and coroners other than those provided for by any statute or rule of the court shall be the fees and allowances set forth in the *Tariff C*. appended to these rules. See *Ontario Rule 1189*. See *Nova Scotia Rules 506 and 525, and 490 to 536 inclusive*. See also *British Columbia Rules 470, 473, 508, 510 and 493*.

Where part only is made by the sheriff on or by force of an 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 where the personal estate, except chattels real, of the judgment debtor is seized or advertised on, or under an execution, but not sold by reason of satisfaction having been otherwise obtained, or from 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 judge may deem reasonable. *Con. Rule 1233*; *Rules 23rd June 1894, 1375, part*.

Where land or chattels real of the judgment debtor have been advertised under an execution, but not sold by reason of payment or satisfaction having been otherwise obtained on, or within one month before the day on which the property has been advertised to be sold, or any day to which the sale may be adjourned, the sheriff shall be entitled to the fees and expenses of the execution and the poundage only on the value of the debtor's interest in the property not exceeding the amount endorsed on the writ, or such less sum as the court or a judge may deem reasonable. *Rules 23 June 1894, 1375, part. Ontario Rule 1190*.

Where there are writs of execution upon the same judgment in several counties, and the personal estate of the judgment

debtor has been seized or advertised in one or more or all such counties but not sold by reason of satisfaction having been obtained under and by virtue of a writ in any of the counties, 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 judge may allow him a reasonable charge for such services in case no special fee therefor is assigned in tariff of costs. *Con. Rule 1234. Ontario Rule 1191.*

The sheriff is not entitled to any costs on an abortive attempt to serve papers. He is only entitled to fees for service when he has actually effected service.

An election petition was dismissed at the trial without costs. It was held that the petitioner must pay to the sheriff the costs incurred on the publication of the notice of trial. The sum deposited as security for costs is not a security for the sheriff's costs, but payment out of court will only be ordered on condition of the sheriff's costs being paid.

The sheriff is not entitled to make any charge for attending to the publication of the notice necessary, as there is no allowance for such an attendance authorized by the tariff. *East Middlesex Provincial Election.* (Ontario Election Cases, Vol. II., p. 150.) See also *Weegar v. G.T.R.*, 16 P.R. 371; *Turner v. Crozier*, 14 P.R. 272; *Hamilton v. Gore Bank*, 20 Gr. 190; *French v. Lake Superior*, 14 P.R. 541; *Re Wells*, 68 L.T. 231; *Creighton v. Daniels*, James 304 (Nova Scotia).

When an Issue is Ordered the Sheriff's Costs to be First Lien on Property Exigible.

Where an issue is directed to be tried the costs of the sheriff incurred in consequence of the adverse claim shall be a first lien or charge upon the moneys or goods which may be found in the issue to be applicable upon the execution.

In addition, and without prejudice to the said lien or charge, the sheriff may, after the issue has been directed to be tried, tax such costs, and may serve a copy of the certificate of taxation upon each of the parties to the issue, and the successful party upon the issue shall tax such costs as part of his costs of the cause, and upon receipt thereof shall pay over the same to the sheriff unless he has been previously paid.

Where, after the service of the certificate, the party succeeding upon the issue neglects or refuses to tax such costs, the sheriff may obtain an order that the successful party shall pay the same.

Where the proceedings are compromised between the parties thereto, the costs of the sheriff shall be paid by the party by whom the execution was issued. *Ontario Rule 1120.*

If Goods Seized Remain in the Sheriff's Custody the Court may Award Remuneration.

Where, after the seizure, an issue is directed, and the property seized remains, pending the trial of the issue, in the custody of the sheriff who seized the same, the court or judge may make an order for payment to the sheriff of such sum for his trouble in and about the custody of the property as the court or judge deems reasonable; and the sheriff shall have a lien upon the property for payment of the same in the event of the issue being decided against the claimant to the extent to which such issue shall be decided. *Ontario Rule 1121.*

SLANDER.

The jury found a verdict for the plaintiff for \$1 in an action for slander, and the judge refused to deprive the plaintiff of his costs as his conduct was not considered reprehensible, the smallness of the verdict being explained by the condition of the defendant at the time the words were spoken. The judgment was affirmed on appeal: *Bell v. Wilson*, 19 P.R. 168. See DISCRETION AS TO COSTS, and see LIBEL. See also *Adair v. Wade*, 9 O.R. 15; *Dickerson v. Ratcliffe*, 17 P.R. 418.

SOLICITOR.

In this province a counsel's right of action for his fees for services in the nature of advocacy is against the client of the solicitor retaining him, and not against the solicitor, unless by special agreement, or when there is evidence of credit having been given to the solicitor alone, or of money in the solicitor's hands to answer the claim; and a solicitor so employing counsel has implied authority to pledge his client's credit for the payment of counsel fees: *Armour v. Kilmer*, 28 Ont. R. 618.

The plaintiff, a suppliant in an action brought against the Crown, by its permission, in the Exchequer Court of Canada, made an agreement with the defendants, a firm of solicitors, that they should conduct her case to judgment, and in consideration of their doing so at their own expense that they should be entitled to retain to their use one-fourth of the sum which should be recovered, and she assigned her claim to them as security for the performance of the agreement:—*Held*, a

champertous agreement, and not binding on the plaintiff: *Ball v. Warwick*, L.J.N.S.C.L. 328, and *In re Attorneys and Solicitors' Act*, 1 Ch. D. 573 followed. Although the services of the defendants under the agreement were performed in a Dominion court, a Provincial court had jurisdiction to entertain an action for an account against the solicitors in respect of moneys received by them from the Crown in satisfaction of the claim. The services performed by the defendants in the Exchequer Court were not performed as officers of the courts of Ontario, and with respect to such services and the remuneration therefor, the defendants were not subject to the Solicitors' Act, R.S.O. 1887, ch. 147, and could not be compelled to deliver a bill of costs. In the absence of a tariff of costs between solicitor and client in the Exchequer Court, the defendants were entitled to remuneration upon a *quantum meruit*, to be established by such evidence as would be appropriate in the forum of litigation: *Paradise v. Bossé*, 21 S.C.R. 419; *Armour v. Kilmer*, 28 Ont. R. 618 followed; *O'Connor v. Gemmill*, 29 O.R. 47.

The rule laid down in *Jarvis v. G. W. R. W. Co.* (1859), 8 C.P. 280, and *Meriden Britannia Co. v. Braden* (1896), 17 P.R. 77, viz.: "That if a client is not liable to pay costs of his solicitor, he cannot recover costs from the opposite party," was followed in *Walker v. Gurney-Tilden Co.*, 19 P.R. 12. Where in an action for damages for personal injuries sustained by a workman in the employment of the defendant, the defence was undertaken by a guarantee company, who had contracted to indemnify the defendants against such claims, and who employed their own solicitors to defend the action: See *Fraser v. Halifax*, 6 R. & G. 23 (Nova Scotia).

The defendant in an action acting in good faith settles the action with the plaintiff in such a way as to deprive the plaintiff of his costs. The plaintiff's solicitor is not entitled to an order for leave to proceed with the action for the recovery of his costs: *Rideout v. McLeod*, 6 B.C.R. 161.

Under R.S.O. 1897, ch. 174, secs. 22, 23, 24, a solicitor who has not taken out his annual certificate renders himself liable to suspension, etc., even though it is shown that he is interested in the subject matter of the litigation: *Re Clarke*, 32 O.R. 237.

Where a municipality employs solicitor or counsel whose remuneration is wholly or partly by salary, annually or otherwise, the municipality shall have the right to recover and

collect the lawful costs in all actions and proceedings in the same manner as if the solicitor or counsel was not receiving a salary, where the costs are by the terms of his employment payable to the solicitor or counsel as part of his remuneration in addition to his salary. Sub-sec. 3, sec. 320, R.S.O. 1897, ch. 222.

Where an application for an extension of time for filing and serving notice of appeal and serving the appeal case (*Ontario Rules 799 and 801*) was made to the respondent's solicitor and was in the opinion of the judge who heard the motion to extend the time prescribed by the Rules unreasonably refused, an order was made extending the time and execution was stayed without costs to the respondent: *Bodine v. Howe*, O.L.R. 1901, Vol. 1, 208.

Where the solicitor is paid by salary, the right to recover costs from the opposite party if successful, is governed by R.S.O. 1897, ch. 222, sec. 320, sub-sec. 33: *Stevenson v. Kingston*, 31 C.P. 33; *Jarvis v. G.W.R. Co.*, 8 C.P. 280; *Galloway v. London*, L.R. 4 Eq. 90.

Where a solicitor defends an action in person and obtains judgment, he is entitled to the same cost as if he had employed a solicitor; except costs rendered unnecessary on account of his acting directly: *London against Chorley*, 51 L.T. 100; 12 Q.B.D. 452.

Where a solicitor takes proceedings in a suit in the name of any person but has no authority, he is personally liable to pay the costs occasioned by the other party to the suit: *Mallins v. Greenway*, 17 L.J.N.S., ch. 26; *Hall v. Laver*, 1 Hare 571.

Where a solicitor is employed by an assignee to carry on suits and does not receive instructions from the majority in value of the creditors, the bankrupt's estate is not liable for his costs: *Ex p. Whitchurch*, 1 A.T.K. 210.

A solicitor's counsel has full authority to either compromise or abandon the claims of his client, provided it is a matter within the scope of the suit. Such a compromise once entered into under this implied authority is not effected by his client's subsequent repudiations, nor even by the client's previous prohibition, unless the opposite party had notice of it: *Re Wood*, *Ex p. Wenham*, 21 W.R. 104; *Berry v. Mullen*, 5 Ir. R. Eq. 368.

Where the respondent's solicitor refused, except upon terms more stringent than the court would impose to extend the time for delivery by the appellant of the appellant's reasons for appeal,

and the draft appeal case; and the appellant refused to accept the respondent's terms, but moved before a judge of the Court of Appeal and obtained an order extending the time, the costs of the motion made necessary by respondent's refusal to extend the time were made costs to the appellant on the appeal: *MacGuire v. Corby*, O.L.R. 1901, Vol. 1, 590.

Solicitor Personal Liability for Costs in Certain Cases.

Where upon trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the court or judge, and which, according to the practice, ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the court or judge shall think fit to award. See *British Columbia Rule 755*.

Solicitor Causing Delay Liable for Costs.—(Nova Scotia Rule.)

Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the court or judge, and which, according to the practice, ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the court or judge thinks fit to award. (E. 980.)

A solicitor is liable in damages to his client for neglecting to obey instructions, to register a judgment and thereby precluding the client from recovering the amount of his judgment debt: *Hett v. Pun Pong*, 18 S.C.R. 290.

Ordered that a solicitor should be struck off the roll, unless by a named day he shall pay an amount found by the report of a taxing officer to be in his hands, the moneys of a client, together with the costs of the taxation and of the motion to strike him off the roll: *Re James Knowles*, a solicitor, 16 P.R. 408.

Where a client applies to strike the name of a solicitor off the roll for misconduct, in neglecting to pay over the client's money in his hands as solicitor, the first application should be made to a judge in court, whereupon, in a proper case an order will be made requiring the solicitor to pay over the money by a named day, and in default that his name be struck off. Upon

default, no further application is necessary, except an application to have the roll brought into court for the purpose of having the name struck off, and this should be on notice to the solicitor.

Ruling of a taxing officer that costs of the first application should be taxed as of a Chamber motion only, reversed on appeal: *Re Bridgman*, a solicitor, 16 P.R. 232.

A claim by a client for negligence against a firm of solicitors in directing the distribution of moneys in the sheriff's hands, was assigned by him to another, and by the latter to the plaintiff:—

Held, *per* Armour, C.J., at the trial, that the claim did not by virtue of R.S.O. ch. 122, sec. 7, pass to the plaintiff so as to enable him to maintain an action there—for in his own name; but in any event no negligence was proved.

On appeal to a Divisional Court the judgment was affirmed on the ground of the absence of any proof of negligence; but *Per* MacMahon, J., that if negligence had been proved the plaintiff could properly have maintained the action in his own name: *Laidlaw v. O'Connor*, 23 O.R. 696.

Upon application to the court, therefore, the next friend of an infant plaintiff may be allowed to withdraw, upon such terms as the circumstances of the case and the welfare of the infant may require.

Solicitors began an action in the name of an infant as plaintiff by her mother as next friend, with the consent of the latter. After the action had been some time in progress the mother wrote a letter to the solicitor revoking the authority to use her name, to which they replied that proceedings would not be stayed, unless she paid costs up to date, and that if she did not do so they would assume that she intended them to continue the action. She took no notice of this, and they went on with some proceedings, whereupon the defendant, instructed by the mother, moved to dismiss the action on the ground that it was being prosecuted without authority, and asked for costs against the solicitors:—

Held, in staying the proceedings, that there was nothing to prevent the mother from renouncing her character of next friend and withdrawing from the litigation, subject to her remaining amenable to the jurisdiction of the court as to liability for costs theretofore incurred.

As to costs:—*Held*, that the court reaches the solicitors of a plaintiff directly for the benefit of the defendant only where the plaintiff as client has a right to be recouped by the solicitor, and to the extent of that recoupment. The next friend here was liable to the solicitor for costs up to her letter, and the solicitor was liable to the next friend for costs subsequent thereto; and as the former costs exceeded the latter, and, as between the next friend and the defendant the former was liable for costs so long as she did not make a direct application against the solicitors, no order could be made in favour of the defendant; but the next friend was entitled to be indemnified by the solicitors for costs incurred after her letter:—

Held, also, that it was competent for the defendant to move to stay the proceedings, although the normal practice is for the next friend to move: *Taylor v. Wood*, 14 P.R. 449.

M., a solicitor, who had not taken out the certificate entitling him to practise in the Ontario courts, allowed his name to appear in newspaper advertisements and on professional cards and letter heads as a member of a firm in active practice; he was not, in fact, a member of the firm, receiving none of its profits and paying none of its expenses, and the firm did not appear as solicitors of record in any of the proceedings in their professional business. The Law Society took proceedings against M. to recover the penalties imposed on solicitors practising without certificate, in which it was shown that the name of the firm was indorsed on certain papers filed of record in suits carried on by the firm:—*Held*, reversing the judgment of the Court of Appeal (15 A.R. 100) and the Q.B.D. (13 O.R. 104) that M. did not "practise as a solicitor" within the meaning of the Act imposing the penalties (R.S.O. (1877), ch. 140), and that he was not estopped, by permitting his name to appear as a member of a firm of practising solicitors, from showing that he was not such a member in fact: *McDougall v. Law Society of Upper Canada*, 18 S.C.R. 203.

Where the solicitors sought to obtain an order for taxation of certain bills of costs against two alleged clients, one of whom disputed the retainer and opposed the application:—

Held, reversing the decision of Street, J., in Chambers, Meredith, J., dissenting, that, in order to avoid multiplicity of taxations, the usual order for taxation should be made as against the unresisting client; such taxation to be on notice to the other, who was to be at liberty to attend and intervene if

so advised; and such taxation to be conclusive against him as to the *quantum* of liability, in case he should be ultimately found liable in an independent proceeding.

Per Boyd, C., and Robertson, J.:—In strictness, the solicitor may take out the common order to tax his own costs, even though he knows that the alleged client disputes his retainer as to the whole bill, and the client is at liberty thereunder to dispute every item on the ground of no retainer; but in such a case it is not well to force the client to contest the question of retainer before the Master, if he desires it to be tried by a judge or a jury, and to accomplish this the taxation should be limited to the quantum of liability.

Per Street and Meredith, JJ.:—It is reversing the proper order of events to allow a solicitor to put his alleged client to the expense of a taxation without requiring him first to show that he has a claim upon the client for the bill when taxed: *In re Jones*, 36 Ch. D. 105; *In re Salaman* (1894), 2 Ch. 301; and *In re Totten*, 27 U.C.R. 449, discussed; *In re Solicitors*, 31 Canada Law Journal, 389.

In re White (1898), 1 Ch. 297, is a case in which a solicitor who was executor of an estate had power under the will to charge profit costs for professional services rendered by him to the estate. The estate in question was insolvent, and the point Kekewich, J., was called on to decide was whether the solicitor was, as against the creditors of the estate, entitled to be allowed his profit costs out of the estate; and he came to the conclusion that the power to make the charge was in the nature of a legacy, which could not be claimed to the prejudice of creditors. According to this decision, therefore, a power to make such a charge in favour of a solicitor executor is nugatory if the estate turns out to be insolvent.

By *Ontario Rule 1165* a set-off of damages or costs between parties shall not be allowed to the prejudice of the solicitor's lien for costs in the particular action in which the set-off is sought, but interlocutory costs in the same action awarded to the adverse party may be deducted. See *Manitoba Rule 949* and *British Columbia Rule 761*. See CHARGING ORDER. See also *Blakey v. Lathan*, 41 Ch. D. 518; *Re Clarke*, 15 P.R. 269; P.R. 94.

In *Turner v. Drew*, 17 P.R. 475, it was held that a set off of damages and costs between the same parties in different actions cannot be ordered to the prejudice of a solicitor's lien. See also

Young v. Hobson, 8 P.R. 253; *Cuthbert v. Commercial Traveler's Association*, 7 P.R. 255; *Ross v. McLay*, 7 P.R. 97; *Wardell v. Trenouth*, 8 P.R. 142; *Moody v. Bank of Commerce*, 14 P.R. 258.

In *Clark v. Eccles*, 3 Chy. Ch. 324, it was held that where an order changing solicitors during the progress of proceedings was obtained, that this fact did not deprive the original solicitor of his lien for costs on any fund afterwards recovered in the cause, but that the original solicitor was entitled to be paid his costs next after the costs of the solicitor who finished the suit. See also *Knight v. Gardiner*, 66 L.T. 646.

A solicitor's lien on the papers and documents of his client, which have come into his possession during the course of their business relations, cannot be actively enforced. The solicitor has a mere right to retain the documents in his possession until his costs are paid, but the lien is general, and is not confined to the costs incurred in the particular business in which the documents came into the hands of the solicitor. The solicitor's lien on books, papers and documents in his possession is subject, however, to parties claiming same by a superior title to that of the client. See *Bozen v. Bolland*, 4 M.Y. & Cr. 354; *Worrall v. Johnston*, 2 Jac. & W. 214; *Colmer v. Ede*, 19 W.R. 313; *Re Biggs*, 102 L.T. Jour. 364; *Francis v. Francis*, 5 P.M. & G. 108; *Ex parte Pulbrook*, L.R. 4 Ch. 627; *Bell v. Taylor*, 8 Sim. 216; *Re Mosely*, 16 W.R. 975; *Stedman v. Webb*, 4 My. & Cr. 346; *Young v. English*, 7 Beav. 10.

Solicitors have also a lien for their agency bills on papers placed in their hands by their principals. See *Re Attorney*, 7 P.R. 321.

As to a solicitor's lien on a fund recovered by his exertions, see *Lann v. Church*, 4 Mad. 391; *Wright v. Bell*, 24 S.C.R.; *Re Garland*, 53 L.T. 921. Unlike a lien upon papers and documents, a solicitor's lien upon a fund may be actively enforced. See *Bozon v. Bolland*, cited above, and *Wardell v. Trenouth*, 8 P.R. 142; *Re Harraed v. Walford*, 51 L.T. 441.

It would appear that a client cannot transfer his right to a fund in court so as to defeat a solicitor's lien. See *Yemen v. Johnston*, 11 P.R. 231. As to the set-off between the parties: See *Ross v. McLay*, 7 P.R. 97; *Wardell v. Trenouth*, 8 P.R. 142; *Young v. Hobson*, 8 P.R. 253; *Flett v. Way*, 14 P.R. 312; *Brown v. Nelson*, 11 P.R. 121; *C. P. R. v. Grant*, 11 P.R. 208.

In *Re Sweeting* (1898), 1 Ch. 268, North, J., here holds that under the English Solicitors' Act 1874, sec. 12 (1) a solicitor cannot tax fees for business done by him while practising without his annual certificate. It is doubtful whether this would be an authority under the Ontario Act (R.S.O. ch. 174). That Act (sec. 2) prevents a person from recovering costs for business done as a solicitor without being "admitted and enrolled," but sub-secs. 19, 22-24 which impose penalties for practising without an annual certificate do not expressly provide that fees for business done by a solicitor practising without a certificate shall not be recoverable. As liability to pay a penalty to the Law Society, and to be suspended from practice, seem to be the only penalties imposed by the Act, and in the absence of an express prohibition forbidding his recovering his fees there seems to be nothing to prevent their recovery.

In *Court v. Berlin* (1897), 2 Q.B. 396, the question was whether the dormant partners of a firm were liable for the payment of costs incurred by a solicitor retained by the active partner of the firm to collect a debt due to the firm, and whether such liability extended to the costs incurred after the firm had been dissolved, but of which as well as the existence of the dormant partners, the solicitor had no notice. A Divisional Court (Wills and Grantham, JJ.) had decided that the dormant partners were not liable for any costs incurred after the dissolution, but the Court of Appeal (Lord Esher, M.R., and Smith and Rigby, L.JJ.,) unanimously reversed that decision. The defendants endeavoured to escape liability under the provisions of the Partnership Act, 1890 (53 & 54 Vict., ch. 39), sec. 36 (3) which enacts that "the estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively." This Act has been held to be merely declaratory of the common law, and the answer which the Court of Appeal gave to the argument founded on this section was that the debt in question was contracted when the retainer was given, and therefore before the dissolution, and did not arise *de die in diem* as the Divisional Court appears to have assumed. See *Friend v. Young* (1897), 2 ch. 421.

In *re a Solicitor* (1898), 1 Q.B. 331. This was an application made by the Incorporated Law Society to strike a solicitor off the rolls on the ground that the solicitor in question had been a

solicitor of a Colonial Court, and had been struck off the rolls of the Colonial Court for misconduct. The only evidence produced of the alleged misconduct was an affidavit that the Colonial Court had made an order striking him off the rolls for professional misconduct. The solicitor, although notified, did not appear, but the court (Wright and Darling, JJ.,) considered that the evidence of the alleged misconduct was insufficient to warrant the granting of the order asked.

In re Humphreys (1898), 1 Q.B. 520, throws light on the construction to be placed on the new *Ontario Rule 1129*, which embodies in substance the provisions of the Imp. Stat. 23 & 24, Vict. 127, sec. 28. That section empowers the court to make a charging order in favour of a solicitor for the amount of his costs on the property recovered or preserved. The English Act does not contain the words "through the instrumentality of the solicitor," which are found in *Ontario Rule 1129*, but they probably add nothing to the force of the rule. In this case the solicitors, acting on behalf of the trustees of a bankrupt's estate, were instructed to take proceedings for the arrest of the bankrupt for offences against the Debtors' Act, 1869, and he was arrested in Australia, whither he had gone with the proceeds of the sale of his stock in trade. On his arrest, a sum of money, the proceeds of the sale, were found upon him, and was taken possession of by the Australian police, and under a power of attorney, prepared by the solicitors, this money was handed over by the police and transmitted to the solicitors for the trustee in bankruptcy. The Court of Appeal (Smith, Chitty and Collins, LJJ.,) agreed with the Divisional Court (Wright and Kennedy, JJ.,) in holding that the money in question was not money recovered or preserved in any civil suit or proceeding, and, therefore, not properly the subject of a charging order. Further, that the power to grant such orders is discretionary, and that such discretion should be rarely exercised in bankruptcy proceedings.

The plaintiffs having recovered judgments for large sums against the defendants sought to set-off such sums *pro tanto* against certain costs adjudged to be paid by the plaintiffs to the defendants, but the solicitors for the defendants asserted a lien for their costs upon the judgment for these costs recovered by their clients against the plaintiffs. The defendants themselves were worthless, but there was another source from which it was probable that the defendant's solicitors would obtain payment of their costs:—*Held*, that this was not enough; if the solicitors

had a certainty of being able to recover their costs from another source the set-off could be ordered because the lien would then be unnecessary; but it being merely a probability the set-off could not be ordered without its operating to the prejudice of the solicitor's lien, for, should that source fail, the lien could not be replaced, and, therefore, under Rule 1165 the set-off should not be ordered: *Molsons Bank v. Cooper*, 18 Ont. P.R. 396.

An action brought by solicitors in the plaintiff's name was dismissed with costs and judgment entered against the plaintiff. The solicitors had acted without any written retainer from the plaintiff, or any instructions from her personally, relying on instructions received from plaintiff's husband, which she positively denied ever having given, and also on letters written to her, the sending of which was not strictly proved and which she denied ever having received.

On a motion made, therefore, by the plaintiff the judgment and all subsequent proceedings were set aside, and the solicitors ordered to pay the plaintiff's costs as between solicitor and client, and the defendant's costs as between party and party: *Scribner v. Parcells*, 20 O.R. 554.

A plaintiff who has obtained judgment in his favour which has been affirmed on appeal to the full court is entitled to have paid out to him the money he has paid into court as security for costs, notwithstanding an appeal by defendant to the Supreme Court of Canada: *Hamill v. Lilley*, 56 L.T.N.S. 620, and *Marsh v. Webb*, 15 Ont. P. R. 64, followed; *The Agricultural Ins. Co. v. Sargent*, 16 Ont. P. R. 397, distinguished; *Day v. Rutledge*, 12 Man. R. 309.

Where no bill of costs has been delivered by a solicitor to his client there cannot be payment within the meaning of sec. 49 of the Solicitors' Act, R.S.O. ch. 174, which refers to the payment of a delivered bill. And where one of the solicitors and their client, according to the solicitor's evidence, together examined the items in the solicitor's docket, which amounted to over \$1,500, and the solicitor explained that certain entries had not been made which would amount to \$300, and the client paid the solicitors \$1,500 in full settlement:—*Held*, that this was not equivalent to the delivery of a bill and payment after consideration: *Re Pinkerton*, 18 Ont. P. R. 331.

Upon the application of a mortgagor the mortgagee's solicitor was ordered by a county judge to deliver to the applicant a copy of the bill of costs of a sale under the power in the mortgage;

and the bill was delivered pursuant to the order:—*Held*, that although the delivery was, under sec. 45 of the Attorney's Act, to be regarded as for the purposes of a reference to taxation, yet the person so obtaining the copy of the bill had not necessarily the right to tax the bill; and *præcipe* order for taxation was set aside where at the time of making it there were two matters in dispute, viz., whether payment as such had been made by the mortgagees to the solicitor, and whether the mortgagees had precluded themselves from the right to tax the bill; *Re Moffatt, a Solicitor*, 12 P.R. 240.

In action brought in 1866 for the sum of \$800 and interest at twelve and a half per cent. against two brothers, S. J. D. and W. McD. D., being the amount of a promissory note signed by them, one copy of the summons was served at the domicile of S. J. D. at Three Rivers, the other defendant, W. McD. D., then residing in the State of New York. On the return of the writ the respondent filed an appearance as attorney for both defendants, and proceedings were suspended until 1874, when judgment was taken, and in December 1880, upon the issue of an *alias* writ of execution, the appellant having failed in an opposition to judgment, filed a petition in disavowal of the respondent. The disavowed attorney pleaded *inter alia* that he had been authorized to appear by a letter signed S. J. D., saying: "Be so good as to file an appearance in the case to which the enclosed has reference," etc., and also prescriptions, ratification and insufficiency of the allegations of the petition of disavowal. The petition in disavowal was dismissed:—

Held, that there was no evidence of authority given to the respondent or of ratification by the appellant of the respondent's act, and therefore the petition in disavowal should be maintained: *Dawson v. Dumont*, 20 S.C. 709.

To justify an order to strike a solicitor off the rolls there must be personal misconduct; it is not enough to show that his partner has been guilty of fraudulent conduct from which a constructive liability to pay money may perhaps arise. The court is not in the habit of exercising even the lesser jurisdiction of ordering payment in a summary manner against a solicitor to whom personally no blame is attributable, though he may be responsible for his partner's acts: *St. Aubyn v. Smart*, L.R. 3 Chy. 646, distinguished; *Re McCaughey and Walsh, Solicitors*, 3 O.R. 425.

In *Re Douglas* (1898), 1 Ch. 199, North, J., determined that where a client, on retaining a solicitor to negotiate a loan,

signed a document by which she charged her interest in the property offered as security for the proposed loan, with the payment of the solicitor's costs, that was such a taking of security for his costs by the solicitor as amounted to a waiver of his lien on his client's documents in his possession for such costs.

Compromise of Action by Client—Costs.

Where a defendant in good faith settles an action with the plaintiff in such a way as to deprive the plaintiff's solicitor of his costs, such solicitor is not entitled to leave to proceed with the action for the recovery of his costs: *Rideout v. McLeod*, 6 B.C.R. 161.

This was an appeal by the defendants from an order made by Mr. Justice Drake, whereby the defendants were ordered by their proper officer to enter the name of the plaintiff on their books as an applicant for admission, as a solicitor of the Supreme Court of British Columbia as of 15th July, 1897, and declaring him entitled to be admitted after the expiration of six months' residence and compliance with the rules of the Law Society. The plaintiff was admitted as an advocate in the North-West Territories after a three years' studentship as prescribed there. He was afterwards and without any further probation admitted in Manitoba, a province in which students or articulated clerks are required to study or serve under articles, as the case may be, the term of five years before call or admission. Sub-sec. 4 of sec. 37 of the Legal Professions Act, 1897, British Columbia, lays down a standard of qualification for the position of solicitor. "With respect to residents of this province, a studentship under a practising solicitor of five years' duration, reducible to three years in the case of graduates of any recognized university of the United Kingdom or Canada, is, amongst other things, required, and with respect to solicitors of the United Kingdom, or any of the superior courts of the colonies, or of the provinces of Canada, who come here for admission, a probationary term of six months has to be spent."

Then follows sub-sec. 5: "Provided, also, that any barrister or solicitor who shall base his claim for call or admission upon his having been called or admitted, as the case may be, as a barrister or solicitor in some place or province where barristers or solicitors are called or admitted after a term of study or articles less than five years (except in the case of a graduate of any recognized university of Great Britain or Ireland, or the Dominion of Canada), must, before call or admission in this

Province, serve as a student-at-law, or under articles, for a sufficient time to complete the full term of five years."

The defendants contended that the plaintiff came under the provision of sub-sec. 5, and therefore, would have to serve under articles for the further term of two years.

Held (Irving, J., dissenting), that the whole Act must be read together, and the words "bases his claim for admission" are not to be construed literally so as to defeat the object of the Act, which establishes a standard of five years' service; and that the plaintiff having served only three years in the N.W.T., did not, by his subsequent admission in Manitoba, bring himself outside the provisions of sub-sec. 5.

Per Walkem, J.—Reading the two sub-sections together, it seems to me that the Legislature has plainly said: "Our standard of qualification is, amongst other things, a studentship, in the case of residents here, of five years, reducible to three years in the case of university graduates, and in the event of any other Province or place having a similar standard of service, its practitioners will be admitted without any further service; but should its term of service be less than five years—save as to university graduates—the full service of five years shall be completed here."

Appeal allowed without costs, defendant's counsel stating that the Society did not ask for costs, and had agreed to pay the plaintiff's costs of the appeal.

Gwillim v. Law Society of British Columbia, 34 Canada Law Journal 328.

SOLICITOR AND CLIENT.

When a client or other person obtains an order for the delivery and taxation of a solicitor's bill of fees, charges and disbursements, or a copy thereof, the bill shall be delivered within fourteen days from the service of the order.

The bill delivered shall stand referred to the proper officer for taxation, and on reference the solicitor shall give credit for, and an account shall be taken of all sums of money by him received from or on account of the client, and the solicitor shall refund what, if anything, may appear, on such taxation, to him to have been overpaid.

The costs of the reference shall, unless otherwise directed, be in the discretion of the officer, subject to appeal, and shall be taxed by him when and as allowed.

The solicitor shall not commence or prosecute any action in respect to the matters referred pending the reference without leave of the court or a judge.

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 the same.

Upon payment by the client or other person of what (if anything) may appear to be due to the solicitor, or if nothing is found to be due to the solicitor, the solicitor (if required) shall deliver to the 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 client.

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 *Ontario Rule 1185*. See *Manitoba Rule 958*.

An order for reference of a solicitor's bill for taxation shall be presumed to contain the above clauses (a) to (e), inclusive of Rule 1185, whether obtained on *præcipe* or otherwise, and by the solicitor, client, or other person liable to pay the bills. See *Manitoba Rule 959*. See *Ontario Rule 1186*.

The reference for taxation shall, unless otherwise ordered, be to the proper taxing officer for the county in which the solicitor resides. See *Ontario Rule 1187*.

Where the retainer of the solicitor is not disputed, and there are no special circumstances, an order may be obtained on *præcipe* from the proper officer in the county in which the solicitor resides.

(a) By the client, for the delivery and taxation of the solicitor's bill.

(b) By the client, for the taxation of a bill already delivered, within one month from its delivery.

(c) By the solicitor, for the taxation of a bill already delivered, at any time after the expiration of one month from its delivery, provided no order for its taxation has been previously made. See *Ontario Rule 1184*. See *Manitoba Rule 960*.

When a person, other than the client, applies for taxation of a bill delivered, or for the delivery of a copy thereof for the purpose of taxation, and it appears that, by reason of the conduct of the client, the applicant is precluded from taxing the

same, but is nevertheless entitled to an account from the client, it shall not be necessary for the applicant to bring an action for an account, but the court or judge may, in a summary manner, refer a bill already delivered, or order delivery of a copy of the bill, and refer the same for taxation as between the applicant and the client, and may add such parties not already notified as may be necessary.

The provisions of Rule 1185, so far as they are applicable, shall apply to such taxation. See *Ontario Rule 1188*.

R.S.O. ch. 247 makes the following provisions as to costs:—

Solicitors to Deliver their Bill One Month Before Bringing Action for Costs.

No action shall be brought for the recovery of fees, charges or disbursements for business done by a solicitor as such until one month after a bill thereof, subscribed with the proper hand of such solicitor, executor, administrator, or assignee (or, in the case of a partnership, by one of the partners, either with his own name, or with the name and style of such partnership), has been delivered to the party to be charged therewith, or sent by the post to, or left with him at, his counting-house, office of business, dwelling-house or last known place of abode, or has been enclosed in or accompanied by a letter subscribed in like manner, referring to such bill.

Court or Judge may Order Bill to be Referred on Application of Either Party.

In case no application is made within the month then the court or judge upon the application of either party may order a reference with such directions and conditions as he may deem proper, and may upon such terms as may be thought just restrain any action for such demand pending the reference.

No Reference to be Made on Application of Party Chargeable After Verdict or After Twelve Months from Delivery of Bill.

No such reference shall be directed upon an application made by the party chargeable with such bill after a verdict or judgment has been obtained, or after twelve months from the time such bill was delivered, sent or left as aforesaid, except under special circumstances, to be proved to the satisfaction of the court or judge to whom the application for the reference is made

If Either Party Does Not Attend Officer may Tax Bill Ex Parte.

In case either party to a reference, having due notice, refuses or neglects to attend the taxation, the officer to whom the reference is made may tax the bill *ex parte*.

Order to Direct Officer to Tax Costs of Reference and to Certify What he Finds Due on Taxation.

Every order for reference shall direct the officer to whom the reference is made, to certify what, upon the reference, he finds to be due to or from the party in respect of such bill.

Officer may Make Special Certificate Costs, on Taxation in Such Case.

The costs of the reference shall be in the discretion of the court or judge or of the taxing officer, subject to appeal, but such officer may certify specially any circumstances relating to the bill or taxation, and the court or judge may thereupon make such order as may be deemed right respecting the payment of the costs of the taxation.

When Special Directions Relative to Costs of Reference May be Given.

In case the reference is made when the same is not authorized except under special circumstances, as hereinbefore provided, the court or judge in making the same may give any special directions relative to the costs of the reference.

Where no Bill Delivered Court or Judge may Order Delivery of Bill and Any Papers.

Where no bill has been delivered, sent or left as aforesaid, and where the bill if delivered, sent or left, might have been referred as aforesaid, any such court or judge may order the delivery of a bill, and may also order the delivery of deeds or papers in the possession, custody or power of the solicitor, his assignee or representative, in the same manner as has heretofore been done in cases where any such business had been transacted in the court in which such order was made.

Not Necessary in First Instance in Action on Bill to Prove Contents of Bill Delivered.

In proving a compliance with this Act it shall not be necessary in the first instance to prove the contents of the bill delivered, sent or left, but it shall be sufficient to prove that a

bill of fees, charges or disbursements subscribed in the manner aforesaid, or enclosed in or accompanied by such letter as aforesaid, was delivered, sent or left in manner aforesaid; but the other party may show that the bill so delivered, sent or left, was not such a bill as constituted a *bona fide* compliance with this Act.

Judge may Allow Actions for Costs Within the Month if Departure from Ontario Apprehended.

A judge of the High Court or County Court judge, on proof to his satisfaction that there is a probable cause for believing that the party chargeable is about to quit Ontario, may authorize a solicitor to commence an action for the recovery of his fees, charges or disbursements against the party chargeable therewith, although one month has not expired since the delivery of a bill as aforesaid.

Where a Party Not Being the Principal Pays a Bill of Costs a Taxation May be Allowed.

Where any person not being chargeable as the principal party is liable to pay, or had paid, any bill either to the solicitor, his assignee or representative, or to the principal party entitled thereto, the person so paying his assignee, or representative, may make the like application for a reference thereof to taxation as the party chargeable therewith might himself have made, and in like manner as if the application had been made by the party so chargeable.

What Special Circumstances May be Considered in Such Case.

In case such application is made when, under the provisions hereinbefore contained, a reference is not authorized to be made except under special circumstances, the court or judge to whom the application is made may take into consideration any additional special circumstances, applicable to the person making it, although such circumstances might not be applicable to the party chargeable with the bill, if he was the party making the application.

Court or Judge May Order the Delivery of a Copy of the Bill.

For the purpose of such reference upon the application of a person not being the party chargeable, or of a party interested as aforesaid, the court or judge may order the solicitor, his assignee or representative, to deliver to the party making the application a copy of the bill upon payment of the costs of the copy.

When a Bill May be Re-taxed.

No bill previously taxed shall be again referred, unless under the special circumstances of the case the court or judge to whom the application is made thinks fit to direct a re-taxation thereof.

Payment Not to Preclude Taxation if Applied for Within a Year.

The payment of any such bill as aforesaid shall in no case preclude the court or judge to whom application is made from referring such bill for taxation if the application is made within twelve months after payment, and if the special circumstances of the case in the opinion of the court or judge appear to require the same upon such terms and subject to such directions as to the court or judge seem right.

A Taxing Officer May Require the Assistance of the Officer of Any Other Court.

In all cases in which a bill is referred to be taxed the officer to whom the reference is made may request the proper officer of any other court to assist him in taxing any part of such bill, and the officer so requested shall thereupon tax the same, and shall have the same powers and may receive the same fees in respect thereof, as upon a reference to him by the court, of which he is an officer, and he shall return the bill with his opinion thereon to the officer who so requests him to tax the same.

How Applications Against Solicitors to be Entitled.

All applications made to refer any bill to be taxed, or for the delivery of a bill, or for the delivering up of deeds, documents and papers, shall be made in the matter of (the solicitor), and upon the taxation of any such bill the certificate of the officer by whom the bill is taxed shall, unless set aside or altered by order of a judge, or by decree or order of court be final and conclusive as to the amount certified to be due and directed to be paid, may be enforced according to the practice of the court in which the reference has been made.

In Cousineau v. London Insurance Co., 12 P.R. 512, 24 Canada Law Journal 409, Armour, C.J., gives his opinion as to what solicitor and client costs include, as follows:—

“The costs in an action as between solicitor and client include in my opinion such costs as a solicitor can tax against the resisting client under the general retainer, only to prosecute or defend the action.”

The remarks of Bagley, L. J., in *Blyth v. Franshawe*, 10 Q.B.D. 207, are instructive in this direction:

"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: Affirmed in *Re Broad and Broad*, 15 Q.B.D.

In taxation of a solicitor's bill against a client for business done for which the tariff makes provisions, the taxing officer has no power to allow larger fees than the tariff specifies; where the business is done by a solicitor for which the tariff makes no provisions, the taxing officer in allowing compensation for the work done must be guided by the general custom, where such a custom or practice exists; otherwise, he must estimate the value of the services rendered upon a *quantum meruit*: *In re Richardson*, 3 Chy. Ch. C.B. 149; *Re Totten*, 8 P.R. 385.

Under *Ontario Rule 1184*, even though a client has paid a lump sum in settlement of a solicitor's charges against him, he is entitled to a copy of the bill of costs, and he can obtain an order on *præcipe* from the proper officer for the delivery of the bill of costs.

As to the meaning of the phrases, "costs as between solicitor and client" and "costs between solicitor and client," see *Cousineau v. City of London Fire Ins. Co.*, 12 P.R. 512; *Heaslip v. Heaslip*, 14 P.R. 21.

Where a party has agreed to pay a retaining fee, it cannot be allowed on a taxation as between solicitor and client: *McKee v. Hamlin*, 16 P.R. 207. If the retaining fee has been actually paid, it was held to be taxable as between solicitor and client in *Ford v. Mason*, 16 P.R. 25.

Where more than one-sixth is taxed off a solicitor's bill of costs, the solicitor must pay the costs of taxation: *Yea v. Frere*, 14 Ves. 154.

An order was made for the taxation of four several bills of a solicitor for various business done for the same party. On the taxation, more than one-sixth was taxed off the gross amount of the four bills, but not off the amount of every one of the bills:—

Held, that as all the bills were incurred by the same person in the same right, there was no need for a separate order of taxation for each bill, and that as more than one-sixth was taken off from the whole amount the solicitor must pay the costs of taxation: *Ex p. Barrett*, 1 Mont. & A. 447.

The costs of taxation depend on whether one-sixth is taken off the bill of costs; to determine this, a distinction is to be made between strictly professional charges and disbursements and independent cash payments. Those payments only which are made in pursuance of the professional duty undertaken by the solicitor and which he is bound to perform, or which are sanctioned as professional payments by the general and established custom and practice of the profession, ought to be entered and allowed as professional disbursements in the bill of costs; other disbursements ought to be included in a separate cash account: *Re Remnant*, 11 Beav. 603.

A candidate at a general election for members of Parliament employed a firm of solicitors as their election agents. It was held that the employment was professional, and that their bill of costs was subject to taxation: *Re Osborne*, 6 W.R. 401.

To entitle a client to an order for taxation of his solicitor's bill of costs, after the expiration of twelve months from its delivery, he must show either pressure or gross over-charge amounting to what a Court of Equity designated as fraud: *Re Strother*, 26 L.T. Ch. 695, 3 K. & J. 518; *Re Hook*, 10 W.R. 116; *Re Walker*, 10 P.R. 400; *Re Butterfield*, 14 P.R. 149.

Where a bill of costs has been paid by the client, it is *prima facie* evidence of its correctness, and the client is bound to prove special circumstances to authorize its taxation. Such special circumstances are usually pressure, as where an immediate payment is required at a time when it would be very inconvenient to the party paying that any delay should occur in the completion of the business, or error or over-charge in the bill: *Re Harding v. Bear*, 250, 16 L.J.N.S. 288; *Re Barrow*, 2 W.R. 109; *Re Foster*, 29 L.J. 625.

Where a solicitor puts in a fraudulent defence for his client without his client's knowledge, the client is not bound by the act of his solicitor: *Williams v. Preston*, 47 L.T. 265.

A solicitor has no implied authority to pledge his client's credit to counsel by an express promise to pay his fees so as to enable the counsel to sue the client: *Mostyn v. Mostyn*, 39 L.J. Ch. 780.

Where a solicitor has been retained for the prosecution of a suit, and he has by *crassa negligentia* in the conduct of the suit caused the suit to be lost, he cannot recover any portion of his bill: *Stokes v. Trumper*, 3 W.R. 140.

In *Cook v. Broomhead*, 16 Ves. 133, a solicitor was ordered to pay all the costs occasioned by his refusing to appear for defendant at the hearing pursuant to his undertaking.

A solicitor will be ordered to pay the cost of an application rendered necessary by his own delay and mistake: *White v. Hillacre*, 33 Y. & Coll. 278.

An agreement by a client to pay costs means an agreement to pay taxed costs. A solicitor's bill can be taxed though no part of the business was transacted in any court of law, but such business must be connected with the profession of a solicitor. It must be business in which the solicitor was employed because he was a solicitor, or in which he would not have been employed if he had not been a solicitor: *Allen v. Aldridge*, 13 L.J.N.S. 155.

On the taxation of a solicitor and client bill, where the taxing officer has allowed certain items to be added to the bill after it is brought in to him for taxation, the amounts of the items added should not be taken into account in deciding as to whether one-sixth has been struck off or not.

Where an account is settled and defendant agrees to pay costs as between solicitor and client, this means costs as between solicitor and client to be paid by the other party; for example, he would not be allowed for costs of services of writ of summons served by a party other than the sheriff.

The taxing officer, on a solicitor and client taxation, has no power to grant more than two counsel fees at the trial, and cannot exceed the amount prescribed by the tariff, namely, \$40 and \$20, without a judge's order. (*In Ontario*.)

If the solicitor, attempting to tax a larger fee than prescribed by the tariff without a judge's order, is able to establish an agreement between himself and his client to a larger sum, this will give the taxing officer jurisdiction. This applies only where the solicitor or his partners are counsel.

Where the solicitor, on the authority of the client, engages outside counsel, the solicitor should be allowed the amount actually paid to the outside counsel as a disbursement.

In a solicitor and client taxation, where the length of the bill of costs rendered would, in the judgment of the taxing

officer, render a copy necessary, he can exercise his discretion and allow on the taxation a copy of the bill.

Where a solicitor and client bill is referred to a taxing officer to be taxed, the officer has no right to add to the bill. This can only be done by a judge's order. Where a solicitor, when his bill of costs is rendered, or at any time before the client makes an application to have same taxed, notifies his client that he will accept a stated amount in full and that he will only accept that amount even if the bill is taxed at more than the amount demanded, the client in order to obtain the costs of taxation must have one-sixth of the amount of the bill as reduced taxed off, otherwise he will be obliged to pay to his solicitor the costs of the taxation.

When the solicitor in rendering his bill of costs, offers to accept a certain definite sum without prejudice and the bill is afterwards taxed at the instance of the client, an offer of this kind would not protect the solicitor against the costs of taxation in the event of one-sixth of the original amount of the bill being struck off. An offer of this kind must be an absolute offer to accept a definite sum, whether more or less was allowed by the taxing officer.

In *Re Crothers*, 15 P.R. 92, it was held that the certificate of a taxing officer upon a reference to tax a solicitor's bill of costs at the instance of the client is a report, and that under the rules of practice an appeal from the taxation should be to a judge in court.

Where the bill of costs is taxed at the instance of the solicitor, see *Ford v. Masson*, 16 P.R. 25, and *Knickerbocker Co. v. Ratz*, 16 P.R. 161.

There cannot be payment within the meaning of sec. 49 R.S.O. ch. 174, The Solicitor's Act, where no bill of costs has been delivered. This section refers to a delivered bill of costs: *Re Pinkerton and Cooke*, 18 P.R. 331.

A solicitor in Ontario who practises in the Exchequer Court of Canada must comply with the provisions of the Ontario Solicitor's Act: *O'Connor v. Gemmill*, 26 Ontario A.R. 27.

STATUTE OF FRAUDS.

The statute of frauds is a meritorious defence, and a defendant who succeeds upon a plea of the statute of frauds, cannot be deprived of his costs of defence: *Dyas v. Stafford*, 9 L.R. Ir. 530. See COSTS, and cases cited thereunder.

STAY OF PROCEEDINGS.

The plaintiff at a trial in the High Court obtained a judgment for damages and costs. On appeal by the defendant to the Court of Appeal the appeal was dismissed with costs. The defendant then appealed to the Supreme Court of Canada, and gave the security required by sec. 46 of the Supreme and Exchequer Courts Act, but no other security. The plaintiff thereupon made an application for an order of payment out of court to them for the sum of \$200, paid into court by the defendants as security for the costs of their appeal to the Court of Appeal.

It was held that proceedings to enforce the plaintiff's High Court judgment was not stayed, and that the court was not bound to pay out to the plaintiff the sum paid in by the defendants; the judgment of the Court of Appeal being stayed pending the result of the appeal to the Supreme Court, as the Supreme Court might reverse the judgment, and for that reason the money should not be paid to the plaintiff unless the plaintiff's solicitor would undertake to repay the money in the event of the Supreme Court reversing the judgment at the Court of Appeal: *Rombough v. Balch*, 19 P.R. 123. See also *Clemons v. St. Andrews*, 11 M.R. 245; *Cobbett v. Warner*, L.R. 2 Q.B. 108.

The court has power to stay proceedings for non-payment of costs where the action is vexatious or vexatiously conducted: *Graham v. Sutton*, 77 L.T. 35.

"No order as to the costs." Where the court makes "no order as to the costs" in an action between a trustee and his *cestui que trust* the trustee cannot lawfully retain his costs out of the trusts estate: *Re Hodgkinson*, 72 L.T. 617.

STENOGRAPHER'S FEES.

Where an action is entered and the stenographer's fee paid, but the action is not tried at that sitting but adjourned to another sitting, it is not necessary to pay the stenographer's fee again; however, if the record is withdrawn, the fee must be paid again.

When an action is referred, the cost of brief copies of the transcripts of shorthand writers' notes of each day's proceedings in the reference, made for the use of counsel, will not, in the absence of any order and the agreement between the parties, be allowed on taxation: *Wells v. Mitcham and Wimbledon District Gas Light Co.*, 4 Eq.D. 1; 48 L.J., Ex. 75; 39 L.T. 667; 27 W.R. 112.

In *Orr Ewing & Co. v. Johnston & Co.*, 13 (C.A.) Ch. D. 434, during the course of the argument the defendants' counsel referred to the printed shorthand notes of the evidence before Mr. Justice Fry. These notes had been taken by the plaintiffs, who had furnished a copy to the defendants, but they had been printed by the defendants at their own expense. The plaintiffs had obtained a copy of the judge's notes of the evidence, and had them printed, and they now objected to the evidence being read from the printed shorthand notes, of which they said they had received no copy. The court directed the defendants to give the plaintiffs copies of the printed shorthand notes on their paying a reasonable price for them: and ordered the evidence to be read from the judge's notes, which might be supplemented, if required, by reference to the shorthand notes. On the appeal being dismissed with costs counsel for the plaintiffs asked for the costs of printing the judge's notes of the evidence, which were allowed.

(James, L. J., said (13 Ch. D. 465): Yes. With respect to the costs of the copies of the printed shorthand notes furnished by the defendants to the plaintiffs, they will have to be returned to the plaintiffs as part of the costs of the appeal).

Stenographers' fees are fixed by Order in Council as follows:

Single copies 5c. per folio.

For copies for appellant 6c. per folio of evidence.

Additional copies for appellant or respondent, per folio 1½c.

In cases not otherwise provided for the taxing officer may 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 proceedings takes place. See *Ontario Rule 1143*. See TAXATION.

STOP ORDERS.

Any person claiming to be interested or to have a lien or charge upon or an assignment of any money, stock or security in court, or invested in the name of the accountant or other officer of the court, or any portion thereof, or claiming to have the same applied towards the satisfaction of any judgment or execution against the person to whose credit such money, stocks or securities stand, or for whose benefit the same are held by the said accountant or other officer, may, upon an affidavit verifying his claim, apply to the court or a judge *ex parte* for an order directing that such moneys, stocks or securities shall

not be paid out or dealt with except upon notice to him. The person obtaining any such order may be ordered to pay any costs, charges and expenses occasioned thereby to any person interested in the money, stock or securities to which such order relates: Ontario Judicature Act, sec. 82. The applicant for a stop order is liable to be ordered to pay the costs of parties unnecessarily notified. The costs of obtaining the order are not granted as of course: *Glazbrook v. Gillatt*, 6 Beav. 611; *Hoole v. Roberts*, 12 Jur. 108.

SUPREME COURT.

The plaintiff at a trial in the High Court obtained a judgment for damages and costs. On appeal by the defendants to the Court of Appeal, the appeal was dismissed with costs. The defendants then appealed to the Supreme Court of Canada and gave the security required by sec. 46 of Supreme and Exchequer Courts Act, but no other security. The plaintiff thereupon made an application for payment out of court to them of the sum of \$200 paid into court by the defendants as security for the costs of their appeal to the Court of Appeal.

It was held that proceedings to enforce the plaintiffs' High Court judgment was not stayed and that the court was not bound to pay out to the plaintiff by the defendants, the judgment of the Court of Appeal being stayed pending the result of the appeal to the Supreme Court as the Supreme might reverse the judgment and for that reason the money should not be paid to the plaintiff unless the plaintiff's solicitors would undertake to repay the money in the event of the Supreme Court reversing the judgment of the Court of Appeal: *Rombough v. Balch*, 19 P.R. 123.

Even though there may be jurisdiction to entertain an appeal in order to avoid expense, the Supreme Court of Canada will, when possible, quash an appeal involving a question of costs only: *Schlomann v. Dowker*, 30 Can. S.C.R. 323. See COSTS, and cases cited thereunder. See APPEAL AND TAXATION.

TAXATION.

Where costs are ordered to be paid a taxing officer may tax the same, without an express reference to him for that purpose. *Ontario Rule 1157*. *Manitoba Rule 943* is same as the Ontario Rule, but provides for a certificate of taxation in addition. See notes to *Ontario Rule 1164*, *post*.

No bill of costs, where the amount 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. *Ontario Rule 1158*. This rule does not limit the jurisdiction of local taxing officers and only applies to costs which must be taxed in Toronto.

Where a notice of taxation is necessary one day's notice shall be sufficient if a copy of the bill of costs and affidavit of disbursements is served therewith. *Ontario Rule 1159; Manitoba Rule 944*.

Notice of taxation shall not be necessary where the defendant has not appeared in person, or by his solicitor or guardian. *Ontario Rule 1160; Manitoba Rule 945*.

The taxing officer may direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and disallow the costs of any person whose attendance he considers 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. *Ontario Rule 1161; Manitoba Rule 946*. See *SEVERING DEFENCES*; also *Connolly v. Hill*, 7 P.R. 441, where one of the defendants was charged with fraud, it was held that the other defendants were justified in severing.

Where two or more defendants defended by different solicitors under circumstances entitling them to put one set of costs the taxing officer shall allow but one set of costs; and if two or more defendants defending by the same solicitor separate unnecessarily in their defence, or otherwise, the taxing officer shall allow but one defence and set of costs. *Ontario Rule 1162*. See *SEVERING DEFENCES*; also *Connolly v. Hill*, 7 P.R. 441, cited above.

Where any party entitled to costs refuses or neglects to bring in his bill of costs for taxation, or to procure the same to be taxed and thereby prejudices any other party, the taxing officer shall certify the costs of the other party, 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. *Ontario Rule 1163. Manitoba Rule 947*.

Where 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 liable to pay, and may adjust the same by way of deduction or set-off, or may 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. *Ontario Rule 1164. Manitoba Rule 948.* Under this rule the taxing officer has only power to set-off costs incurred in the same action, and has no power to set-off costs incurred in different actions: *Hassell v. Stanley* (1896), 1 Ch. 607. See also *Link v. Bush*, 13 P.R. 425; *Hammond v. Keachie*, 17 P.R. 565; *Young v. Hobson*, 8 P.R. 253; *Summerfeldt v. Johnston*, 17 P.R. 6; *Fouchier v. St. Louis*, 13 P.R. 318; *Wright v. Culvert*, 34 Canada Law Journal 355. In the latter case it was held that a set-off authorized by this rule may be made irrespective of the solicitor's lien for costs.

When costs are given to any party they shall be such as are provided for by the scale of costs now in force in that behalf, and shall be taxed according to such scale by the taxing authority. (1894, ch. 13, sec. 1.) *Nova Scotia Rule 21.*

A set-off of damages or costs between parties shall not be allowed to the prejudice of the solicitor's lien for costs in the particular action in which the set-off is sought; but interlocutory costs in the same action awarded to the adverse party may be deducted. *Ontario Rule 1165. Manitoba Rule 949.* See cases cited under *Ontario Rule 1164, ante.*

Costs may be taxed on an award, although the time for appealing from or moving against the award has not elapsed. (*Con. Rule 1206*) *Ontario Rule 1166.* See ARBITRATION. See also *Beaty v. Toronto*, 13 P.R. 316; *Ex Re Preston*, 16 P.R. 318, also R.S.O. ch. 62.

All bills of costs or disbursements in actions for the administration or partition, or for the foreclosure, redemption or sale of mortgaged premises, and all other 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 is to be paid out of any estate in which the infant, lunatic, or person of unsound mind is interested) shall be revised by one of the taxing officers at Toronto, before the amount thereof is inserted in any certificate, report, judgment or order. *Ontario Rule 1167. Manitoba Rule 950.* See REVISION OF TAXATION.

In any 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 case of urgency a writ of execution may be issued to levy debt or costs, or both, upon the order of a judge, subject to the future revision by the taxing officer. *Ontario Rule 1168. Manitoba Rule 953.*

Pending a revision, judgment may be entered and execution issued, unless the court or 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 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 endorsed on the execution. *Ontario Rule 1169. Manitoba Rule 954.*

A local Master or other local officer shall forthwith after taxing any such bill of costs, transmit the same by mail to Toronto, addressed to the proper taxing officer, and he shall allow in the bill the postage for the transmission and return of the bill, and shall pay the same, and shall 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, shall be paid at the time of taxation by the party procuring the bill to be taxed; and the local master or other officer shall 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. *Ontario Rule 1170.* See REVISION OF TAXATION, and cases cited thereunder.

The taxing officer at Toronto, upon receiving the bill of costs, shall examine the same, and mark in the margin such sums as appear to him to have been improperly allowed, or to be questionable; and he shall revise the taxation either *ex parte* or upon notice to the Toronto agent of the solicitor whose bill is in question, as he may see fit; and he shall notify 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. The notification may be by appointment mailed to the address of the agent (if any). If upon the revision the sums disallowed amount to one-twentieth of the amount allowed upon taxation, the taxing officer shall add to the amount taxed off the amount of postage, and the sum of one dollar aforesaid, and shall thereupon re-transmit the bill, so revised, to the local Master or other officer. *Ontario Rule 1171.* See REVISION OF TAXATION, and see *post*.

Mileage shall not be taxed or allowed for the service of any writ, paper or proceedings, without an affidavit stating the sum actually disbursed and paid for such mileage, and the name of the person to whom such payment has been made; and except in cases provided for, the mileage or service of writs of summons unless served and sworn 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. *Ontario Rule 1172. Manitoba Rule 955.* See MILEAGE and WITNESSES, and cases cited thereunder.

(1) An affidavit of disbursements shall be made by the solicitor in the cause or matter, or some clerk having the management thereof, or by the client.

(2) The affidavit shall set forth the sums paid to the counsel, naming them, and for what service, the names of witnesses, their places of abode, the places at which they are subpoenaed, and the distance which each such witness was necessarily obliged to travel in order to attend the trial, and the sums paid to them, and shall state that all such witnesses were necessary and material for the client in the cause or matter, that they did attend, and that they did not attend as witnesses in any other cause (or otherwise, as the case may be), and the number of days that each witness was necessarily absent from home in order to attend such trial. If a solicitor attends as a witness, it shall 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 took place shall be stated. *Ontario Rule 1173; Manitoba Rule 956.* See WITNESSES, and cases cited thereunder. See DISBURSEMENTS.

The necessity for maps or plans used at the trial, the sum paid for them, and that they were prepared or procured with a view to the trial of the cause, shall be shown by an affidavit of disbursements. *Ontario Rule 1174; Manitoba Rule 956.* See MAPS and PLANS and cases cited thereunder. See also *Pilgrim v. Southampton*, 8 C.B. 25; *Batley v. Kynoch*, L.R. 19 Eq. 90; *McGannon v. Clarke*, 9 P.R. 555.

Where the costs are 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. *Ontario Rule 1175.* See UNNECESSARY COSTS. See also *Re McMillan*, Canada Law

Journal 285; *Torrance v. Torrance*, 18 Canada Law Journal 223; *Re Allenby*, 14 P.R. 235; *Warner v. Mosses*, 17 Canada Law Journal 479; *Edwards v. Pearson*, 20 Canada Law Journal 93; *Carlisle v. Roblen*, 16 P.R. 328.

(1) Between party and party the taxing officer shall not allow the costs of proceedings

(a) Unnecessarily taken.

(b) Not calculated to advance the interests of the party on whose behalf the same were taken.

(c) Incurred through over-caution, negligence or mistake, unless he is of the opinion that such proceedings were taken by the solicitor because, in his judgment, reasonably exercised, they were conducive to the interests of his client.

(2) Between solicitor and client the taxing officer may allow the costs of proceedings taken as mentioned in the above clauses (a) and (c) of this Rule, where he is of the opinion that such proceedings are taken by the solicitor because, in his judgment, reasonably exercised, they were conducive to the interests of his client, and may allow the costs of proceedings taken as mentioned in clause (b) where the same 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. *Ontario Rule 1176*. See UNNECESSARY COSTS, and see also *Pringle v. McDonald*, 7 P.R. 152; *Re Robertson, Robertson v. Robertson*, 24 Gr. 555; *Logan v. Kirk*, 14 P.R. 130; *Re O'Donohoe*, 12 P.R. 612; *Baldwin v. Quinn*, 16 P.R. 248.

Where the costs are to be taxed between party and party, the taxing officer may allow 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 the counsel on the pleadings, evidence and other proceedings.

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 consultation 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. (*Con. Rule 1216*); *Ontario Rule 1177*; *Manitoba Rule 957*. See SOLICITOR AND CLIENT, SOLICITOR AND TAXATION, and cases cited thereunder.

Costs shall be allowed and taxed according to the table of costs set forth in the tariff appended to these Rules, and no other fees, costs or charges than are therein set forth shall be allowed in respect of the matters thereby provided for. *Ontario Rule 1178.*

The fees and disbursements, payable in stamps or otherwise upon proceedings in the High Court and Court of Appeal, and in the County Court shall henceforward be to those enumerated in the Tariff B. appended to these Rules. *Ontario Rule 1179.*

Where a seal is under section 154 of the Judicature Act, 1895, 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 section 183 of the Judicature Act, 1895, shall not be payable on such document.

British Columbia Rules in Reference to the Taxation of Costs etc.

Costs may be taxed on an award notwithstanding the time for appeal from, or moving against, the award has not elapsed. (990).

One day's notice of taxing costs, together, with a copy of the bill of cost 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. (991).

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. (992).

The following general regulations shall apply to all proceedings and all taxation in the Supreme Court: (1002).

As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendance on the deponent to settle and read over.

As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

When the same solicitor is employed for two or more defendants, and separate pleadings are delivered, or other proceedings had by two or more of such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party, or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

As to attendance at the judge's court, whether by reason of the non-attendance of any party (unless it be considered expedient to proceed *ex parte*), or whether by the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any other fee as against any other party, or any estate or fund in which any other party is interested.

A folio is to comprise one hundred words, every figure comprised in a column or authorized to be used to be counted as one word.

As to the inspection of documents under Order XXXI., Rule 15, no allowance is to be made for any notice or inspection unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

The court or judge may, at the hearing of any cause or matter upon any application or proceeding in any cause or matter in court or chambers, and whether it is objected to or not, direct the costs of any indorsement on a writ of summons, pleadings, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce, admit, or cross-examine witnesses, account, statement procuring discovery by interrogatories or order, applications for time, bills of costs, service of notice of motion or summons, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, 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, vexatious, or to contain unnecessary

matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question shall not have been raised before and dealt with by the court or judge, it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any decrees or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

In any case in which, under the last proceeding, regulation, or any other Rule in court, or by the order or direction of a court or judge, or otherwise, a party entitled to recover 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 shall think 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 such officer may allow or certify the costs to be paid and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

Where any party appears upon any application or proceeding in court or chamber 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.

The costs of application to extend the time for taking any proceeding shall be in the discretion of the taxing officer unless the court or judge shall especially directed how the costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time unless by order of a judge. The costs of a summons to extend time shall not be allowed in cases to which Rule 8 of Order LXIV. applies, unless the party taking out such summons has previously applied to the opposite party to consent, and he has given a consent, to a sufficient extension of time, or the taxing officer shall consider there was a good reason for not making such applications, and in case the taxing officer shall not allow the costs of such summons, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment, or deal

with such costs in the manner provided by regulation XIII. The taxing officer shall, for the purpose of any proceeding before him, have power and authority to administer oaths.

In the absence of any direction by the court or a judge, 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 to such officer shall in his discretion consider unnecessary in consequence of the interest of such party and such fund or estate being small or remote, or sufficiently protected by the other parties interested.

When 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 prejudice 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.

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-cautiousness, negligence or mistake, or merely at the desire of the party.

Where the plaintiff is directed to pay to the defendant the costs of the cause, the cost occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the court at the time of any amendment.

Where, upon taxation, a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such

XIII.
before

costs without any order referring the same for taxation unless the court or a judge upon the application of the party alleging himself to be aggrieved prohibits the taxation of such costs.

the,
what
to be
party
sider
y and
y pro-

Where it is directed that costs shall be taxed in case the parties differ about the same, the party claiming the costs shall bring the bill of costs into the office of the taxing officer and give notice of his having done so to the other party, and at any time within eight days after such notice other parties shall have liberty to inspect the same without fee if he thinks fit, and at or before the expiration of the eight days or such further time as the taxing officer shall in his discretion allow, such other party shall either agree to pay the costs or signify his dissent therefrom and shall thereupon tender a sum of money for the costs; but where he makes no such tender, or where the party claiming the costs refuses to accept the sum so tendered, the taxing officer shall proceed to tax the costs; and where the taxed costs shall not exceed the sum tendered the costs of the taxation shall be borne by the party claiming the costs.

bring
ed and
be at
such
ecting
t any

its are
have
end-
officer
nce or

nt the
y any
to be
o any
ssary
lucted
y the
f any

Where any costs are by any order or judgment directed to be taxed and to be paid out of any money or fund in court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order.

The allowance in respect to fees to any accountants, merchants, engineers, actuaries, and other scientific persons to whom any question is referred, shall be regulated by the taxing officer, subject to appeal to the court or judge, whose decision shall be final.

judg-
nt of
ssary,
all be
to be

As to all fees or allowances which are discretionary the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings and all other circumstances; and where a party is entitled to sign judgment for his costs, the taxing officer, in taxing the costs, may allow a fixed sum for the costs of the judgment.

s, or a
ral or
c such

Any party who may be dissatisfied with the certificate or allocatur of a taxing officer to any item or part of an item in any bill of costs taxed by him, may within fourteen days from

the date of the certificate or allocatur, or such other time as the court or judge or taxing officer, at the time he signs his certificate or allocatur, may allow, applied 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 he may think just.

Where a cause or matter shall not be brought on for trial or hearing the costs of and consequent on the preparation and delivery of briefs shall not be allowed if so directed by the court or a judge, or if the taxing officer shall be of opinion that such costs were prematurely incurred.

When a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties, or other defect on part of plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter.

In cases in which an original affidavit can be used and to which Order XXXVIII., Rule 16, applies, it shall not be necessary to take an office copy.

It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used as against such party.

Where, in proceedings before the taxing officer any party is guilty of neglect or delay, or puts any other party to unnecessary or improper expenses relative to such proceedings, the taxing officer may direct such party or his solicitor to pay such costs as he may think proper, or deal with them under Regulation X., *supra*.

Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the taxing officer may, if he shall consider there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill, or any part thereof, previously to such officer completing the taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the bill of cost has been referred to the taxing officer, giving his name and address, for taxation, and will be proceeded with at the time the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable.

The taxing officer shall have power to limit or extend the time for any proceeding before him, and where, by any general order, or any order of the court or a judge, a time is appointed for any proceeding before or by a taxing officer unless the court or judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and although the application for the same is not made until after the expiration of the time appointed. It shall not be necessary to make a certificate or order for this purpose unless required for any special purpose.

Every bill of cost which shall be left for taxation shall be indorsed with the name and address of the solicitor by whom it is so left, and also the name and address of the solicitor, if any, for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be taxed.

Where any petition in a cause or matter is served and notice is given to the party served that in case of his appearance in court his costs would 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 such payment shall be allowed the same in his costs provided such service was proper, but not otherwise; but this order 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 judges shall consider the party entitled notwithstanding such notice or tender to appear in court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition without appearing thereon he is to be allowed a fee not exceeding the amount aforesaid.

The fees, costs, and charges relating to all proceedings in any civil matter or action in the Supreme Court, as between party and party or solicitor and client, shall be allowed according to the schedule in Appendix N. hereto; and no other fees, costs, or charges shall be allowed. A solicitor may, however, contract with his client for a lump sum for costs, but the opposite party shall not be chargeable therewith or with any other sum in lieu of the charges in the said schedule.

Where under this order any matter is left to the discretion of a taxing officer, such matter may, in case of any dispute arising with respect thereto between the parties interested therein, be summarily referred, at the request of any such parties, by the officer to a judge whose decision thereon shall be final.

When several plaintiffs have been joined and some or more of them only have or has been 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 (*Ontario Rule 1171*).

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 indorser 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 (*Ontario Rule 1176*).

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 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. (*Ontario Rule 1177*).

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 of a judge (*Ontario Rule 1180*).

Where the costs of one defendant ought to be paid by another, 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 (*Ontario Rule 1181*).

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 defence or otherwise, the taxing officer is, without any special order of the court, to allow but one defence and set of costs.

Nova Scotia Rules in Reference to Taxation of Costs, etc.

One day's notice of taxing costs, together with a copy of the bill of cost, 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. (E. 991.)

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. (E. 992.)

Where the prothonotary may enter judgment for default of appearance or defence or by confession, he may, except in actions for foreclosure of mortgage, tax the costs, but such taxation may be reviewed or set aside within twelve months by the court or judge. (P.A. 243 part.)

Every prothonotary in whose office an action or appeal is pending, on the request of any party shall examine and check any bill of costs for taxation, and ascertain that it contains no other or greater fees than are allowed by law; no allowance per folio shall be made but upon his certificate of the numbers of folios; and except as in the last preceding rule otherwise provided, before any such bill is charged against the plaintiff or defendant, it shall be allowed and signed by a judge or other taxing authority. (R.S., c. 128, s. 4.)

The prothonotary shall in every case give the items of his charges to the taxing authority when required. (R.S., c. 128, s. 5.)

When interlocutory costs are taxed against any person execution may be issued for the recovery thereof. (P.A. 255.)

Costs may be sued for and recovered as any other debt, and either party may have such costs taxed at any time before or at the trial. Any bill duly taxed before trial shall be *prima facie* evidence that the amount allowed is the correct amount. If the taxation is contested by the party against whom such costs are sought to be recovered, the same shall be final. (P.A. 256.)

Solicitors and counsel shall be entitled to charge and be allowed the fees provided in the chapter of "Costs and Fees," which shall also apply to pending proceedings.

When costs are given to any party, they shall be such as are provided for by the scale of costs, now in force in that behalf, and shall be taxed according to such scale by the taxing authority (1894, ch. 13, sec. 1).

When any successful party is deprived of any costs by any order or judgment of the court, or a judge, the reasons for so depriving such a party of any costs shall be expressed in and by such order or judgments (1894, ch. 13, sec. 2).

The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court :—

As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent or client, or for counsel.

As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of any affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing authority in his discretion thinks fit.

The allowances for instructions and drawing an affidavit in answer to interrogatories include all attendances on the deponent to settle and read over.

As to delivery of pleadings, services and notices, the fees are not to be allowed when the same solicitor, or firm of solicitors, is for both parties, unless it is necessary for the purpose of making an affidavit of service.

As to perusals, the fees are not to be allowed where the same solicitor, or firm of solicitors, is for both parties.

Where the same solicitor, or firm of solicitors, is employed for two or more defendants, and separate pleadings are delivered, or other proceedings had, by or for two or more defendants separately, the taxing authority shall consider, in the taxation of such solicitor's bill of costs, either between party and party, or between solicitor and client, whether separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence and the attendance of witnesses are to be allowed.

As to agency correspondence in country agency causes and matters, if it is shown to the satisfaction of the taxing authority that such correspondence has been special and extensive, he may make such special allowance in respect thereto as in his discretion he thinks proper.

As to attendances at the judges' chambers, where by reason of the non-attendance of any party (unless it is considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account or other proceeding, the attendance is adjourned without any useful progress being made, the judge may order such amount of costs, if any, as he thinks reasonable to be paid to the party attending by the party so absent or neglectful, and is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

In a folio, every figure comprised in a column, or authorized to be used, shall be counted as one word.

As to inspection of documents under Order XXX., Rule 15, no allowance is to be made for any notice or inspection unless it is shown to the satisfaction of the taxing authority that there was good and sufficient reasons for giving such notice and making such inspection.

As to taking copies of documents, in possession of another party, or extracts therefrom, under rules of court or any special order, the party entitled to take the copy or extracts is to pay the solicitor or the party producing the document for such copy or extract as he, by writing, requires, at the rate of ten cents per folio; and if the solicitor or the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereto.

The court or judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter, in court or at chambers, and whether the same is objected to or not, direct the costs of any indorsement on a writ of summons, pleading, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery by interrogatories, or order, application for time, bills of costs, service of notice of motion or summons or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or

contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing authority to look into the same and to disallow the costs thereof, or any part thereof, as he finds to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question has not been raised before, and dealt with by the court or judge, it shall be the duty of the taxing authority to look into the same (and as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

In any case in which, under the next preceding regulation, or any other rule of court, or by the order or direction of a court or judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing authority may tax the cost such party is so liable to pay, and may adjust the same by way of 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 such authority may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

Where any party appears upon any application, or proceeding in court or 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 expressly directs such costs to be allowed.

The costs of application to extend the time for taking any proceedings shall be in the discretion of the taxing authority, unless the court or judge has specially directed how the costs are to be paid or borne. The authority shall not allow the costs of more than one extension of time unless he is satisfied that such extension was necessary, and could not, with due diligence, have been avoided. The costs of an application to extend time shall not be allowed in cases to which Rule 6, Order LX., applies, unless the party making such application has previously applied to the opposite party to consent, and he

has not given a consent to a sufficient extension of time, or the taxing authority considers there was a good reason for not applying to the other party; and in case the taxing authority does not allow the costs of such application to the court or a judge, and considers that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment, or deal with such costs in the manner provided by regulation.

As to costs to be borne or paid by another party, no costs are to be allowed which do not appear to the taxing authority to have been necessary or proper for the attainment of justice, or defending the rights of the party, or which appear to the taxing authority to have been incurred through over-caution, negligence, mistake, or merely at the desire of the party.

As to any work and labour properly performed and not herein provided for, and in respect to which fees have been allowed immediately preceding the coming into force of these rules, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed.

When the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which appears to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which has been paid by the defendant according to the course at the time of any amendment.

Where upon taxation, a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

The allowance in respect to fees to conveyancing counsel, and to any accountants, merchants, engineers, actuaries and other scientific people to whom any question is referred, shall be regulated by the court or judge, whose decision shall be final.

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.

Any party who is dissatisfied with the decision of the taxing authority as to any item, or part of an item in a bill of

costs, to which he has objected on taxation, may have such item or part of item re-taxed by a judge after forty-eight hours' notice in writing to the opposite party, specifying the item objected to, and the judge may thereupon make such order as to him seems just; but the decision of the taxing authority shall be final and conclusive as to all matters which have not been objected to on the taxation before him; such re-taxation shall not operate as a stay of proceedings. If the costs are reduced on re-taxation the prothonotary shall minute such reduction on the margin of the docket of judgment, and the amount shall be deducted in the order for levy on the execution, or if previously paid, may be recovered by action; in case the bill on re-taxation is reduced one-sixth, or more, the costs of the re-taxation shall be borne by the party whose bill has been reduced, otherwise they shall be borne by the party applying for the re-taxation.

In case the party offering the bill for taxation is desirous of having it re-taxed he shall be entitled to do so before entering judgment, or issue execution thereon, on giving forty-eight hours' notice in writing to the opposite party specifying the items or parts of items he claims to have added to the bill. If the bill on re-taxation is increased one-sixth the party applying for the re-taxation shall be entitled to such costs of re-taxation as the judge allows, which shall be added to the bill; if he fails to increase the bill to one-sixth he shall pay to the opposite party the costs of re-taxation, which shall be fixed by the judge and deducted from the bill when re-taxed.

In cases in the Supreme Court a judge in that court shall be the re-taxing judge, and in cases in a County Court the judge of that County Court. (E. 1002 part; O. (1897), R. 1140.)

The court or judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter, in court or in Chambers, and whether the same is objected to or not, direct the costs of any indorsement on a writ of summons, pleading, affidavit, evidence, notice of requiring a statement of claim, notice to produce, admit or cross-examine witnesses, account, statement; procuring discovery by interrogatories or order; application for time, bill of costs, service of notice of motion or summons or other proceeding, or any part thereof which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed; or may

direct the taxing authority to look into the same and to disallow the costs thereof, or of such part thereof as he finds to be improper, unnecessary, vexatious, or to contain unnecessary matter or to be of unnecessary length, or caused by misconduct or negligence, and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties. Where such question has not been raised before and dealt with by the court or judge, it shall be the duty of the taxing authority to look into the same (and as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequence shall ensue as if he had been specially directed to do so. See *Nova Scotia Rules*.

Two actions were brought by the same plaintiffs against different defendants to recover rent for different parcels of land in which the defence was not identical. A compromise was effected, and it was agreed between the parties "that judgment shall be entered in each of the said actions for the amounts claimed therein by the plaintiffs, with costs of suit between solicitor and client," and judgments were entered accordingly:—

Held, that the plaintiffs were entitled to tax a separate set of costs for each action.

The plaintiffs made six affidavits on production, either prompted by the action of the defence or by the way of voluntary supplement to the original affidavit:—

Held, *per* Boyd, C., in Chambers, that they were entitled to tax the costs of one affidavit only, with extra folios for the additional matter contained in the subsequent affidavits:—

Held, also, *per* Boyd, C., that upon the taxation "between solicitor and client" of the plaintiffs' costs they were not entitled to the costs of a motion for summary judgment under *Ontario Rule 739*, which was useless and not according to the practice, and was refused because the indorsement on the writ of summons claimed "interest on arrears of rent," and was therefore not a good special indorsement: *Baldwin v. Quinn*, *Baldwin v. McGuire*, 16 P.R. 248.

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 shown 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, Solicitor*, 12 P.R. 612, C.P.D.; 14 P.R. 317.

Under sec. 152 of the Ontario Judicature Act, the seal of the court is to be impressed. Under sec. 183 a fee of fifty cents is payable for the seal of the court. *Ontario Rule 1180* was passed in order to prevent the fee from being payable on ordinary filings.

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 not inconsistent with the Judicature Act, 1895, and the Rules of Court, remain in force and be applicable to costs of the same 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. *Ontario Rule 1181*.

The plaintiff brought a County Court action against the defendant to recover \$140, balance alleged to be due the plaintiff for the sale of a chattel. The defendant paid into court the sum of \$25 in full, which the plaintiff accepted in due course. On the application of the defendant, the judge of the County Court made a summary order allowing the defendant to set-off his costs on the County Court scale in the excess of such costs as he would have incurred if the action had been brought in the Division Court against the costs of the plaintiff, and gave the defendant liberty to enter judgment and issue execution for the excess, if any, of the defendant's costs over and above costs of the plaintiff.

It was held that the plaintiff was entitled to costs on the County Court scale, irrespective of the amount paid into court and accepted by him in full of his claim. The plaintiff being entitled to his costs on the County Court scale by provision of Rule 425, they were not subject to the discretion of the judge, as Rule 425 is not qualified by Rule 1130. Under sec. 52 R.S.O. ch. 55 (The County Court Act), as the judge's order was in its nature final, an appeal would lie: *Babcock v. Standish*, 19 P.R. 195.

In *Re Crothers*, 15 P.R. 92, it was held that the certificate of a taxing officer, upon a reference to tax a solicitor's bill of costs at the instance of the client, is a report and that, under the rules of practice, an appeal from the taxation should be to a judge in court.

Where the bill of costs is taxed at the instance of the solicitor: See *Ford v. Masson*, 16 P.R. 25, and *Knickerbocker Co. v. Ratz*, 16 P.R. 161.

All taxing officers shall, for the purpose of any taxation, have power to administer oaths and take evidence, direct production of books and documents, and give general directions for the conduct of taxations before them.

Where there are several defendants who defend separately and obtain a verdict generally, the costs of all the defendants need not be taxed at the same time: *Brueford v. Griffin*, 20 L.J. Ex. 287.

In a County Court taxation no charges can be made for enlargements by the clerk. The fee of 80 cents payable to him covers all his charges for taxation.

Taxation of a bill of costs can be proceeded with without notice of taxation being served, but solely at the solicitor's risk. If, however, the other side has a right to bring in a bill of costs of his own for taxation, then notice is indispensable.

The time for appealing from taxation of a bill of costs begins to run from the taxing officer's certificate, and not from the date of each ruling of the taxing officer during the progress of the taxation: *Re O'Donohoe*, 12 P.R. 612.

In *Platt v. Grand Trunk R.W. Co.*, 12 P.R. 273, it was held that, on an appeal to a judge in chambers from the taxation of a bill of costs by a local taxing officer, no costs of the appeal should be given unless entire success was with one party or the other.

The discretion of the taxing officer as to the *quantum* or *quoties* of fees will not be interfered with by the Court of Appeal, and this Rule is applicable even where the taxing officer makes a distribution or allotment of charges among different cases or branches of a case: *Conmee v. N.A. Contracting Co.*, 13 P.R. 433. See *Call v. Collins*, 12 P.R. 369.

The taxing officer has a discretion, where an interlocutory motion is dismissed upon preliminary objections, to allow the party personally the costs of affidavits filed in answer to it: *Whitewood v. Whitewood*, 19 P.R. 183.

If the principle on which the taxing officer proceeds is objected to he may review his taxation under Rule 1231 (now Rule 1183) without any written objection being brought in by the party proposing to appeal as provided by Rule 1230 (now Rule 1182): *Clark v. Virgo*, 17 P.R. 260; *Denison v. Woods*, 18 P.R. 328; *Re Robinson*, 16 P.R. 423, distinguished.

The taxing officer held upon a party and party taxation that the costs of the day of a trial thrown away by reason of the absence of the trial judge were taxable. This was overruled on appeal, and the *quantum* of counsel fees was also referred and reduced: *Hamilton Mfg. Co. v. Victoria Lumber Co.*, 5 B.C.R.

An application to a judge for an order for a review of taxation, or an appeal from the taxation, as to any item, or part of an item, contained therein, cannot be entertained unless the party applying has first carried in an objection in writing as provided by the Rules; and he cannot on the review of taxation raise any points not set forth in his written objections. In the objections to taxation it is not necessary to state the reasons for such objections. Under the English Rules it is necessary on an appeal from taxation to give reasons, but not so in Ontario.

A party was allowed to appeal notwithstanding the fact that the taxing officer had issued his certificate before the objections were filed. It was shown that he had acted in good faith, and relied upon the taxing officer not issuing his certificates until after the taxation of interlocutory costs: *Cousineau v. Park*, 15 P.R. 37.

Where the taxing officer has a discretion in regard to certain items by the Rules, and in such items as instructions for motions and affidavits, letters, attendances, counsel fees, this discretion will not be, as a general rule, interfered with upon an appeal from his decision: *Smith v. Wills*, 34 W.R. 30; *Brown v. Sewell*, 18 Ch. D. 517; *Talbot v. Poole*, 15 P.R. 274.

Where the plaintiff succeeds on his claim and the defendant succeeds on his counter-claim, the costs should be taxed as far as possible as though they were two actions, in one of which the plaintiff succeeds and in the other the defendant succeeds. The plaintiff is entitled to the costs applicable to his claim and the defendant to those applicable to his counter-claim. The defendant's costs commence with instructions for defence and counter-claim: *Sharpnel v. Laing*, 20 Q.B.D. 334. Where the action is tried with a jury, and both claim and counter-claim are dismissed with costs, the plaintiff must pay the general costs of the action, the defendant only those incurred by the counter-claim: *Saner v. Sillon*, 11 Ch. D. 416.

In *Budgett v. Budgett* (1895), 1 Ch. 202; 13 R. Jan. 141, one of the principal questions was whether, upon the taxation of costs claimed by trustee as against the trust estate, it was

competent for the beneficiaries against the will of the trustees to insist on the disallowance of items in the bill which appeared to be barred by the Statute of Limitations, some of which had been paid by the trustees after they were barred, and others of which remained unpaid. Kekewich, J., was of opinion that the *cestui que trust* could not compel the trustees to set up the Statute of Limitations as against their own solicitor. He drew a distinction between the case of an executor or administrator and a trustee on the ground that in the case of a personal representative he is not paying his own debt, but the debt of the deceased, and the persons beneficially interested in his estate are entitled to require the statute to be set up as against such claim; whereas a trustee is personally liable to his solicitors for the costs incurred in the matter of the trust estate, and the debt is his own, and he is entitled to be indemnified against all honest claims which may be made against him in respect thereof, and cannot be compelled to set up the statute as a bar to such claims against his will.

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 in which the solicitor resides, or in another county, or in Toronto: *Agnew v. Plunkett*, 9 P.R. 456.

On a taxation between a party and party instructions for reply will not be allowed, as well as instructions for statement of claim. But expenses incurred in procuring a deed and certain other documents, which caused a saving of expenses, were allowed: *Torrance v. Torrance*, 9 P.R. 271.

A bill was filed but not served, and was subsequently dismissed with costs by the plaintiff. It appeared that, although 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 defendant was entitled to tax instructions, and the costs of the taxation: *Bishop v. Strachan*, 8 P.R. 211.

The costs of serving an infant personally who is out of the jurisdiction will not be allowed: *Rew v. Anthony*, 9 P.R. 545.

Expenses incurred for surveys and other special work of that nature, made in order to qualify witnesses, surveyors to give evidence, are not taxable between party and party; the English Chancery Order 120 (1845) not being in force here: *McGannon v. Clarke*, 9 P.R. 555.

Upon an appeal from the taxation of the plaintiff's party and party costs:—*Held*, that the costs of a *similiter* with a jury notice were properly disallowed: *Alexander v. School Trustees of Gloucester*, 11 P.R. 157.

The defendants were the same in all three actions. The actions were brought against the defendants other than the company as wrongdoers. They were sued for an alleged conspiracy to defraud, which it was alleged they carried into effect by defrauding the plaintiffs respectively. The defendant McLean defended, meeting the charge directly. The other defendants did the same, but they further said that they obtained their information from McLean, and that they believed it to be true, and believed that the statement made by them and McLean, which was the foundation of the actions, was true:—*Held*, that the taxing officer was right in allowing two bills of costs, one to the defendant McLean and one to the other defendants: *Petrie v. Guelph Lumber Co.*; *Stewart v. Guelph Lumber Co.*, 10 P.R. 600.

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

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: *Platt v. Grand Trunk Railway Co.*, 12 P.R. 273.

An order was obtained by the plaintiff, who sued for damages for bodily injuries sustained, for his own examination *de bene esse* before the 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 afterwards the defendants might continue their cross-examination of the plaintiff, and that the examination might be given in evidence at the trial, "provided that 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 their medical men, but his cross-examination, owing to his ill-health, was never completed. The plaintiff was not examined as a witness at the trial; the depositions taken were offered in the evidence, but were rejected as inadmissible under the terms of the order. The plaintiff succeeded in the action:—*Held*, that under the circumstances of the case that 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 defendant, the costs of it should have been taxed to the plaintiff as part of the costs of the action. *Beaufort v. Ashburnham*, 13 C.B.N.S. 598; 32 L.J.N.S.C.P. 97; L.T.N.S. 710; 11 W.R. 267, 9 Jur. 822, followed; *Carty v. City of London*, 13 P.R. 285.

Where the arbitrators, having authority so to do, awarded costs, and their award not having been moved against, it was the duty of the taxing officer to tax costs: *Re Smith v. City of London*, 13 P.R. 479. See *Re Beatty v. City of Toronto*, 13 P.R. 316.

In an action against a municipal corporation for injury to a drain, the corporation caused two contractors who had constructed the drain, and the assignee of one of them, to be made defendants. The two contractors were partners at the time of the construction of the drain, but had dissolved partnership before the action had begun. One partner appeared, and defended by one solicitor, and the other partner and his assignee by another solicitor. Judgment was given dismissing the claim of the corporation against the added defendants with costs, but they were not limited by the judgment to one set of costs:—*Held*, that was no "law of the court" which, under the circumstances of the case justified the taxing officer in refusing to allow more than one set of costs to the added defendants. *Con. Rule 1202* considered. *Melbourne v. City of Toronto*, 13 P.R. 346.

There is no need for local officers, when taxing costs for the purpose of completing a judgment and issuing execution thereon (which they as local officers may also do), to preface the issuing of an execution by a formal certificate to themselves of what they have done upon the taxation. They signify clearly and sufficiently the completion of the taxation, and their full discharge of their functions as taxing officers, when they add up results ascertaining the correct amount payable, note the bill of costs as taxed at that sum, with the date, and verify the whole with their signature, which is a sufficient certificate or *allocatur* to show that the taxation is at an end. They have no power to alter what they have allowed or disallowed after this, except as to clerical errors, and they are then *functi officii*: *Cuerrier v. White*, 12 P.R. 571. The objections to taxation must be carried in in writing before the signature of the officer is affixed: *ib.*

An informal certificate of taxation was written at the end of a bill of costs showing that it was taxed at so much, initialed by the taxing officer, and marked "filed" in his office:—*Held*, that there was not a sufficient filing of a certificate of taxation for the purpose of appeal to satisfy the rule laid down in *Langtry v. Dumoulin*, 10 P.R. 444. *McCallum v. McCallum*, 11 P.R. 179, distinguished. *Gall v. Collins*, 12 P.R. 413.

Upon the issuing of a certificate of taxation, a taxing officer is *functus officio*, and it is only when the court requires information that he should further certify: *Langtry v. Dumoulin*, 10 P.R. 444.

An appeal from a certificate of taxation will not lie until the certificate has been filed.

Appeals from taxation should be brought on within a reasonable time; and within eight days, the time limited for appeals under Rule 427, O.J. Act (*Con. Rule 846*), is a reasonable time. *Stark v. Fisher*, 11 P.R. 235, and *Quay v. Quay*, 11 P.R. 258, approved. *Ireland v. Pitcher*, 11 P.R. 403.

Appeals from taxation by local officers must be brought on within eight days from the date of the taxing officer's certificate: *Stark v. Fisher*, 11 P.R. 235.

Appeals from the taxation of costs by local registrars are subject to eight days' limit prescribed as to appeals from orders of Masters and local judges, as was held in *Stark v. Fisher*, 11 P.R. 235, but the time for appealing may be enlarged by the Master in Chambers or a judge: *Quay v. Quay*, 11 P.R. 258.

Where no formal certificate of the result of a taxation by a local registrar of the party and party costs was filed, but the bill itself, with a memorandum at the end signed by the registrar showing the result, was filed in the local office and forwarded to Toronto for the purpose of an appeal, and it was admitted that execution had issued upon such memorandum:—*Held*, that the appeal should not be barred because no more formal certificate was filed. Two clear days' notice of such an appeal is sufficient: *Exchange Bank v. Newell*, 19 C.L.J. 253, distinguished; *McCallum v. McCallum*, 11 P.R. 179.

Upon an appeal to a judge in chambers from the taxation of costs by a local taxing officer, where the bill was referred to one of the taxing officers at Toronto, as upon a revision:—*Held*, that there should be no costs of an appeal and revision, unless substantially entire success was with one party or the other: *Platt v. Grand Trunk R. W. Co.*, 12 P.R. 273.

Upon appeals from taxation of costs the court will not interfere with the discretion of the taxing officer as to *quantum* or *quoties* of fees; and this rule covers any question of distribution or allotment of charges among different cases or branches of a case: *Connec v. North American Contracting Co.*, 13 P.R. 433.

The practice upon appeals from pending taxation of costs to the Master in Chambers or the Master in Ordinary, under Con. Rule 854, should be simple and inexpensive; there is no necessity for a formal order or a counsel fee upon such an appeal: *Re Nelson*, a solicitor, 13 P.R. 30.

It is not desirable that any taxation should come more than once by way of appeal before a judge; and where there was an appeal, pending the taxation, to the Master in Ordinary and an appeal from his order to a judge in chambers, the latter was ordered to stand over till after the close of the taxation. *Ib.*

As there was no need to appeal in this case, and the application might have been made in chambers, no costs of it were given: *Fouchier v. St. Louis*, 13 P.R. 318.

An appeal from the taxation of costs where the amount in question is less than \$40 should not be brought before a Divisional Court: *Re McRae v. The Toronto and Quebec R. W. Co.*, 12 P.R. 327.

An appeal from taxation of costs was entertained in chambers where the amount involved was \$5.32 for the reason that a question of principle was involved: *Monk v. Benjamin*, 13 P.R. 256.

The plaintiff's costs were being taxed by one of the taxing officers at Toronto when he applied to stop the taxation in order that he might have the order for taxation varied. The taxation was stopped, the officer gave up to the plaintiff the bill of cost which he had brought in for taxation and nothing further was done:—*Held*, that the effect of this was that the appointment to tax and the taxation lapsed, and no further proceedings could have been made without a fresh appointment, and, therefore, the taxing officer was not thereafter seized of the taxation, and the local registrar in whose office the action had been begun and was pending could properly issue his appointment and tax the plaintiff's costs: *Cousineau v. City of London Fire Ins. Co.*, 13 P.R. 36.

The defendants objected that they had not a reasonable notice of the taxation by the local registrar, but did not ask for

an enlargement of it, relying instead on objections they took to its proceedings at all and the taxation proceeded in their absence:—Held, that having taken the risk they must also take the result. *Ib.*

The taxing officers have the power to call for evidence on taxations pending before them: *Williamson v. Town of Aylmer*, 12 P.R. 129.

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 defendant 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. *Ib.*

G., a judgment créditeur of W. A. C., garnished a fund recovered by J. W. C., suing as the assignee of W. A. C., disputed the validity of the assignment from W. A. C. to J. W. C., and an issue was directed to be tried between G. and J. W. C. as to the portion of the fund which would remain after satisfying the claim of the solicitor of J. W. C. who had a lien upon the funds for his costs incurred in the recovery of it. Upon appeal from the taxation of these costs before the trial of the issue:—Held, that G. had the right to be represented upon the taxation and appeal, as in one event he had an interest in the reduction of the solicitor's bill, and there could not be two taxations, one as against J. W. C., and the other as against G., if he succeeded in the issue: *Gall & Co. v. Collins*, 12 P.R. 413 (d).

The tariff in force does not now pretend to exhaust all possible items of service for which remuneration is to be made. The object of the tariff is to provide a fixed or movable scale for usual and ordinary services and as to all items embraced therein it is generally conclusive, but for other matters one has to go outside of the tariff to the practice and course of the court. It is therefore for the taxing officer to determine, according to a proper discretion, what allowance to make for procuring the attendance of witnesses who live out of the jurisdiction: *Ball v. Crompton Corset Co.*, 11 P.R. 256. See *Re McKeen and the Township of South Gower*, 12 P.R. 553, p. 385; *Carty v. City of London*, 13 P.R. 286, p. 385.

Upon an appeal from the taxation of the plaintiff's party and party costs, it was held a counsel fee for settling plaintiff's

reply to the defendant's counter-claim should have been taxed, in addition to fee allowed on settling statement of claim: *Alexander v. School Trustees of Gloucester*, 11 P.R. 157.

The discretion of the taxing officer as to the counsel fees at the trial should not be interfered with.

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

Under an order, made at the Assizes postponing the trial upon payment of "the costs of the day," only one counsel fee of \$10 is taxable: *Hogg v. Crabbe*, 12 P.R. 14.

An action came on for trial, and a postponement was applied for by the defendant, and was ordered upon payment of the costs of the day:—*Held*, that counsel fees were chargeable and taxable according to the discretion of the taxing officer, and not according to any arbitrary limit: *Hogg v. Crabbe*, 12 P.R. 14, dissented from; *Outwater v. Mullet*, 13 P.R. 509; see *post*.

In taxing the costs of an arbitration upon the County Court scale, no larger fee for attendance of counsel before the arbitrator than \$25 can be allowed, even though the attendance is for several days: *Re Montague and the Township of Aldborough*, 12 P.R. 141; see also *Wood v. Fisher*, 6 P.R. 175, and *Re Hillyard v. Royal Ins. Co.*, 12 P.R. 285.

The words "taxable costs of defence," used in Rule 1172, do not mean costs as between solicitor and client: *Talbot v. Poole*, 15 P.R. 274.

A party should not be deprived of his appeal, from the taxation, by reason of the officer having issued his certificate before the party has carried in his objections, as required by Rule 1182, where he has not delayed, and has in good faith, relying on the officer not issuing his certificate, until after the taxation of interlocutory costs: *Cuerrier v. White*, 12 P.R. 571, distinguished; *Cousineau v. Park*, 15 P.R. 37.

An appeal lies to a Divisional Court from an order of a judge in chambers upon appeal from a certificate of taxation of costs.

The discretion of a taxing officer as to the amount of counsel fees will not be interfered with upon an appeal: *Talbot v. Poole*, 15 P.R. 274.

By R.S.O. ch. 147, sec. 42 (now R.S.O. ch. 174, sec. 45) any person not chargeable as the principal party who is liable to

pay, or has paid a solicitor's bill of costs, may apply to a judge of the High Court, or of the County Court, for an order for taxation.

An action was brought against school trustees, and a rate-payer of the district applied to a judge of the High Court for an order under this section to tax the bill of the solicitor of the plaintiff, who had recovered judgment. The application was refused, but on appeal to the Divisional Court the judgment refusing it was reversed: 21 O.R. 289.

There was no appeal as of right to the Court of Appeal from the latter decision, but leave to appeal was granted, and the Court of Appeal reversed the judgment of the Divisional Court and restored the original judgment refusing the application: 19 A.R. 56. From this last decision an appeal was brought to the Supreme Court of Canada:—

Held, per Ritchie, C.J., Strong and Gwynne, JJ., that assuming the Court had jurisdiction to entertain the appeal, the subject matter being one of taxation of costs, this court should not interfere with the decision of the provincial courts, which are the most competent tribunals to deal with such matters.

Per Ritchie, C.J., Strong and Patterson, JJ.—That a rate-payer is not entitled to an order for taxation under said section.

Per Taschereau, J., the court has no jurisdiction to entertain the appeal as the judgment appealed from was not a final judgment within the meaning of the Supreme Court Act. The matter was one in the discretion of the court below, and the proceedings did not originate in a Superior Court.

Where an action was, roughly speaking, divisible into two parts, one claiming compensation for land, and the other seeking to restrain the defendants from proceeding to estimate it in an improper way, and the judgment gave the plaintiff the costs of the first branch and no costs of the second to either party:—

Held, that the taxing officer had not erred in principle in allowing the plaintiff one-half of the general costs, and also items which exclusively related to the first branch: *Vansant v. Village of Markham*, 15 P.R. 412.

The report or certificate of an officer upon the taxation of the costs of a solicitor, as against his client, falls under the provision of Rule 1226 (*d*) as to its confirmation, and is, for the purpose of an appeal, a report within the meaning of Rules 848 and 849: *Ford v. Mason*, 16 P.R. 25. See *Knickerbocker Co. v. Ratz*, 16 P.R. 191, *post*.

The certificate of a taxing officer upon a reference to taxation of a solicitor's bill of costs at the instance of a client is a report, and under Rules 848, 849 and 850 the appeal therefrom should be to a judge in court upon seven clear days' notice: *Re Crothers*, 15 P.R. 92.

Where the defendant was ordered to pay the plaintiff's costs of a former action, as between solicitor and client, an unpaid retaining fee which the plaintiffs had agreed in writing to pay to their solicitors, over and above the costs of the action, was held not to be taxable: *Re Geddes and Wilson*, 2 Chy., ch. 447, and *Ford v. Mason*, 16 P.R. 25, approved and followed; *Re Fraser*, 13 P.R. 407, distinguished; *McKee v. Hamlin*; *Hamlin v. Connolly*, 16 P.R. 207.

Held, that where the plaintiff, before serving the writ of summons on defendants out of the jurisdiction, obtains an order shortening the time for appearance, he should include it in an order allowing the issue of the writ for service out of the jurisdiction, and should not have taxed the costs of a subsequent order allowing the service. Rule 274 and Form 121 considered: *Sparks v. Purdy*, 15 P.R. 295.

A disbursement, charged in a bill of costs of \$1, paid in stamps to an officer of the court upon settling a bond, was disallowed upon appeal from taxation.

Such a fee is not authorized by tariff B. annexed to the Consolidated Rules under the item "Every reference, inquiry, examination, or other special matter": *Casey v. Morden*, 16 P.R. 127.

A plaintiff who is entitled only to Division Court costs of an action can tax as part of such costs his travelling expenses from abroad to attend the trial, if he is a necessary and material witness: *Talbot v. Poole*, 15 P.R. 274.

Where witnesses in attendance at the trial are not called the *onus* is on the party subpoenaing them to show their relevancy: *Carlisle v. Roblin*, 16 P.R. 328.

The defendant obtained an order dismissing the action with costs for non-prosecution, upon notice to the plaintiff, who did not appear upon motion. The defendant did not serve the plaintiff with a copy of the order, and went on and taxed his costs without notice to the plaintiff, and issued execution for the amount taxed:—

Held, on ground for setting aside the execution, that the order had not been served before the taxation: *Hopton v. Robertson*, 23 Q.B.D. 126*n* distinguished:—

Held, also, that the absence of a notice of taxation was not an irregularity entitling the plaintiff to set aside the execution, but only to a re-taxation of the costs: *Lloyd v. Kent*, 5 Dowl. 125, followed: *Cranston v. Blair*, 15 P.R. 167.

That payment out of the monies in court to the defendant of his costs of the High Court and the Court of Appeal, upon the undertaking of his solicitors to repay in the event of the further appeal succeeding, could not properly be ordered: *Kelly v. Imperial Loan Co.*, 10 P.R. 499, commented on; *Agricultural Insurance Co. v. Sargent*, 16 P.R. 397.

The taxing officer has power to allow or disallow affidavits used on an application without express direction, if motion was refused upon a technical objection and the Master disallowed affidavits filed in answer to the motion. His discretion was not interfered with on appeal: *Ogilvie v. Small*, II., 120 (Manitoba). See also *Howard v. Burrows*, VII., 181 (Manitoba).

Upon appeal from taxation between solicitor and client of a bill of costs for the defence in an action of redemption in which, before the beginning of the sittings at which the action was entered for trial, an arrangement had been made between the parties that all the matters in question should be referred to a Master, and accordingly no witnesses were subpoenaed, and a reference was directed at the sittings;

Held, that the taxing officer has no discretion to allow an increased counsel fee with brief at trial, as the action could not be said to be of a special and important character, nor to allow a fee for advising on evidence.

The reference lasted for one hundred and thirty-seven hours, eighteen of which were occupied in argument. Nearly the whole of the time was devoted to the main matter in contest, viz., whether the defendants should be charged with an occupation rent, and if so, at what amount. The Master found that they were chargeable with a rent of \$312.50. The taxing officer allowed the solicitor \$302 for the time occupied in taking the evidence and \$47 for the argument.

Held, that the allowance of counsel fees upon a reference, under clause 107 of the tariff, should be exceptional, and made only when matters of special importance or difficulty are involved at some particular sitting; and, also, that the taxing officer should have taken into consideration the unreasonable time occupied over so small a matter, and have exercised his discretion by confining the solicitor to the minimum allowance of

\$1 an hour, under clause 104 of the tariff for the argument as well as for the taking of the evidence: *Re Robinson*, 16 P.R. 423.

As to subsistence of non-resident plaintiff, see *Adams v. McBeath*, 3 B.C.R. 34.

The taxing officer allowed the solicitor \$77.50 for brief upon appeal from the Master's Report; this amount included \$67.80 paid to Master for copies of the depositions.

Held, that the solicitor had no *prima facie* right to order and charge for these copies, and, in the absence of any authority from his clients, should not be allowed for them upon taxation.

The taxing officer allowed the solicitor \$35 counsel fee upon the appeal, \$12 travelling expenses, and \$10 counsel fee upon the plaintiff's motion for judgment, which came before the court with the appeal.

Held, that these allowances, though liberal, were not so clearly wrong as to justify the court in interfering: *In re Solicitor*, 31 C.L.J. 177.

The solicitor defended an action of ejectment and prosecuted three actions for malicious prosecution on behalf of the applicants.

On the 18th of October, 1899, before the termination of any of the actions, the solicitor delivered to the applicants his bills of costs in them all up to that time. On the 29th of April, 1890, he delivered further bills of costs in all the actions, which had then been brought to an end.

Application for a reference of all the bills to taxation was made on the 20th of November, 1890.

Held, that the application was in time, for the retainer existed until the litigation ended, and the applicants had a full year from the delivery of the bills last delivered to apply for the taxation of all the bills:—

Held, also, that the "Special Circumstances," which, by sec. 34 of R.S.O. ch. 147, must exist to justify a reference to taxation after twelve months from delivery of the bills are not confined to cases of actual fraud or gross overcharge and pressure: *Re Norman*, 16 Q.B.D. 673, followed.

Held, also that bringing these separate actions which might all have been joined in one, and charging excessive counsel fees were special circumstances to be regarded in ordering a taxation after twelve months: *Re Butterfield, a Solicitor*, 14 P.R. 149.

An order transferring a cause or proceeding from a Surrogate Court into the High Court contained a clause providing that in the event of the defendant, the applicant for an order, failing to establish his defence, his costs, if any were allowed to him, should be on the Surrogate Court scale. By a consent judgment, which recited the pleadings and proceedings and adjudged that the will which was disputed by the defendant was the last will of the testatrix and should be admitted to probate, it was also adjudged that the costs of all parties should be paid out of the estate.

Held, upon appeal from taxation, that the defendant was bound by the order of transfer and his costs should be taxed on the scale of the Surrogate Court: *In re Forster*, 34 C.L.J. 162.

In an action instituted by the widow of T.W. to set aside a will alleged to have been executed by him under undue influence, D. acted as her solicitor and obtained a decree as prayed. During the pendency of such action one H. was appointed by the court administrator with a view of getting in certain debts due the estate before being¹ barred by lapse of time. Numerous actions were brought by D. in the name of H., in some of which moneys aggregating a large sum was recovered, whilst in many no benefit whatever resulted to the estate, and costs amounting in the whole to \$2,738.37 were incurred, which had been taxed as between solicitor and client on H. passing his accounts before the Master, and were paid to D. partly by H. out of moneys of the estate and partly by funds coming into D.'s hands as such solicitor and retained by him. Subsequently a prior will of T.W. was duly proved by the executors named therein, who took proceedings to obtain an account of H.'s administration and a taxation of D.'s costs. These proceedings finally resulted in a dismissal thereof as against D. and an order on H. to pass his accounts, which he did, charging the estate with the amount of costs so paid to D., but on a retaxation of D.'s bills the aggregate amount was reduced to \$726.56, several of the bills having been disallowed *in toto* on the alleged ground that the actions had been brought without the leave of the court and H. was ordered to pay in the difference. H. was unable to do so, and thereupon he, as also the executors, by their several petitions applied for and obtained an order upon D. to repay the amount with costs, or in default be struck off the roll of solicitors: 29 Chy. 280. On appeal the order was reversed (Spragge, C.J.O., dissenting) the court being of opinion that the taxation and all the other proceedings in reference thereto having been had in a proceeding

to which D. was not a party he could not be bound thereby. *Per Spragge, C.J.O.*: Under the circumstances appearing in the matter an order to strike D. off the rolls in case of non-payment was not called for, and that there were special circumstances in the case for the opening of the taxation at the instance of the estate: *Wilson v. Beatty—In re Donovan*, 9 A.R. 149.

On an appeal by the client from a local Master's taxation, as between solicitor and client, of the solicitor's bill in an action against a bank which was dismissed, and in which the real claim, if any, was on a deposit receipt, with interest amounting to \$355, or the moneys secured thereby alleged to belong to the plaintiff as administratrix, and in which action the facts, as set out in the report, only came to the knowledge of the solicitor and client after the action was brought, there being sufficient room for doubt whether a claim could be ascertained after the death of the creditor by the signature of the debtor, to warrant the bringing of the action in the High Court:—*Held*, that the solicitor was entitled to High Court costs: *Re Jackson, a Solicitor*, 18 P.R. 326.

An appeal does not lie to the Court of Appeal or a judge thereof, but to the High Court or a judge thereof, to review the taxing officer's taxation of the costs of an appeal to the Court of Appeal from a judgment of the High Court.

There has been no such change in the Act or Rules as to make *Petrie v. Guelph Lumber Co.*, 10 P.R. 600, inapplicable, and it is therefore to be followed: *Holmes v. Bready*, 34 Chy. 43, 194.

Upon appeal from the taxation between solicitor and client of a bill of costs for the defence of an action of redemption in which, before the beginning of the sitting at which the action was entered for trial, an arrangement had been made between the parties that all the matters in question should be referred to a Master, and accordingly, no witnesses were subpoenaed, and a reference was directed at the sittings:—

Held, that the taxing authority had no discretion to allow an increased counsel fee with brief at the trial, as the action could not be said to be of a special and important character, not to allow a fee for advising on evidence.

The reference lasted for 137 hours, 18 of which were occupied in argument. Nearly the whole of the time was devoted to the main matter contest, viz., whether the defendants should be charged with an occupation rent, and if so, at what amount. The Master found that they were chargeable

with rent of \$312.50. The taxing officer allowed the solicitor \$302 for the time occupied in taking the evidence, and \$47 for the argument:—

Held that the allowance of counsel fees upon a reference under clause 107 of the Tariff should be exceptional, and made only when matters of special importance or difficult matters are involved at the same particular sitting; and also that the taxing officer should have taken into consideration the unreasonable time occupied over so small a matter, and have exercised his discretion by confining the solicitor to the minimum allowance of \$1 an hour, under clause 104 of the Tariff, for the argument as well as for the taking of the evidence.

The taxing officer allowed the solicitor \$77.50 for brief upon appeal from the Master's report; this amount included \$67.80 paid to the Master for copies of the depositions:—

Held, that the solicitor had no *prima facie* right to order and charge for these copies, and, in the absence of any authority from his clients, should not be allowed for them upon taxation.

The taxing officer allowed the solicitor \$35 counsel fee upon the appeal, \$12 for travelling expenses, and \$10 counsel fee upon the plaintiff's motion for judgment, which came before the court with appeal:—

Held, that the allowances, though liberal, were not so clearly wrong as to justify the court in interfering: *Re Robinson, a Solicitor*, 16 P.R. 423. See 17 P.R. 137.

Residuary legatees may apply for taxation of bills of costs rendered to executors for services to the estate, for they come within sec. 42 of the Solicitor's Act as being "liable to pay," *i.e.*, by the lessening of the amount of the residuary estate: *Re Skinner, a solicitor*, 13 P.R. 276.

Any one *cestui que* may, in the discretion of the court, obtain an order under the third party clauses of the Solicitor's Act for the taxation of a bill of costs for business connected with the trust estate of a solicitor employed by a trustee: *Sandford v. Porter*, 16 P.R. 565.

Any party who is dissatisfied with the decision of the taxing officer, in any appeal of costs, taxed by him, may, before the taxing officer, sign his certificate, serve the other party or parties interested with objections to the taxation, and bring his objections before the taxing officer. Such items must state the item or items objected to. It is, however, necessary to have

reasons for the objections raised. Where the objection to the taxations is one of a number the items need not be specified: *Simmons v. Stores*, 14 Ch. D. 154; *Sparrow v. Hill*, 44 L.T. 146.

The taxing officer on the review of taxation can ask for further evidence as to any item objected to if he sees fit.

The other party can require him to state in the certificate of taxation his reasons for allowing or disallowing any item, or items of any special fact, and he must also state at the request of either party any special fact or circumstance relating to the taxation.

By an order obtained by clients upon præcipe a bill of costs was referred for taxation, and the taxing officer was directed to take an account of all sums of money received by the solicitor of or on account of the applicants.

Under this the taxing officer taxed the bill and took an account of the moneys received by the solicitor, and in so doing inquired into and determined the validity of a disputed agreement in the nature of a compromise relating to some older bills of costs not referred to taxation, but which the solicitor now claimed should be allowed at their face value, and which the applicants claimed should be allowed only at the amount settled by the disputed agreement. *Per* Hagarty, C.J.O., and Burton, J.A., that the officer had no jurisdiction under the order to determine the validity of the agreement. *Per* Osler and Maclean, J.J.A., that he had jurisdiction.

The Court of Appeal being thus equally divided, the decisions of Armour, C.J., and the Common Pleas Divisional Court, 12 P.R. 612, were affirmed.

It is doubtful if a matter of this kind, which relates wholly to the practice and procedure of the High Court of Justice for Ontario, and of the officer of that court in construing its Rules and executing an order of reference made to him, is a proper subject of appeal to the Supreme Court: *Re O'Donohoe, a Solicitor*, 14 P.R. 317; *O'Donohoe v. Beatty*, 19 S.C.R. 336.

C., who was in active practice as a lawyer, and the author of several useful legal treatises, had obtained a mortgage on a valuable leasehold estate, and having taken such proceedings as resulted in a forfeiture of the mortgagor's term, procured from the owner of the property a renewal of the lease to himself. The mortgagors instituted proceedings to redeem, but C. asserted that he was absolute owner of the interest, and instructed solicitors to defend the suit. They expressed to C. some doubt

as to the right to resist the claim of the mortgagors, whereupon he, with one of the solicitors, went to a counsel of note, who, without having time to give the case full consideration, verbally advised them that suit should be defended. C. drafted his answer, his solicitor adding one clause. Counsel retained for the hearing told C. he would undoubtedly fail in the litigation, and subsequently the usual decree for redemption was pronounced, C. being ordered to pay such costs as had been occasioned by his resisting redemption. It was alleged against the solicitors that they had advised C. that he would be entitled to costs in any event; that they had refused to consider or submit to him an order to pay the mortgage money and costs on the ground, as they alleged, that C. claimed about three times the sum offered; that they had concluded with the mortgagor's solicitor in having proceedings instituted which they had wrongly advised him to defend; and that he had a good defence, but the same had been negligently managed. There was a written retainer which did not express any special arrangement as to costs, or the terms on which the defence was to be conducted. The court being of opinion that C. had failed to make good his charges against the solicitors, affirmed the order made by Spragge, C., reversing the finding of the taxing officer that the solicitors were not entitled to recover the costs of the litigation: *Re Kerr, Akers and Bull, Solicitors*, 29 Chy. D. 188.

TENDER.

Where a petition or notice of motion is served, and notice is given to the party served that in case of his appearance in court his costs will be objected to, accompanied by a tender of \$5 for costs, the person 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 considers the party entitled, notwithstanding such notice or tender, to appear in court. *Ontario Rule 1153, Manitoba Rule 941*. Where a party has been served and the procedure pointed out by this Rule has not been carried out, the party served will be entitled to attend and will be allowed taxed costs: *Gardner v. Burgess*, 13 P.R. 250. See also *Re Sutton*, 21 Ch. D. 855; *Re Varcon Trusts*, 33 W.R. 297. Discussion as to the effect of the defences of tender and payment into court upon the question of costs and otherwise: *Davis v. National Assurance Co.*, 16 P.R. 116.

Unless the defendant pays into court the full amount which at the trial is found due to the plaintiff he is liable for costs. In *Henderson v. Bank of Hamilton*, 25 O.R. 641, affirmed on appeal 22 A.R. 414, the defendant paid into court twenty cents less than the correct amount due to plaintiffs, and it was held that the plaintiffs were entitled to full costs.

Costs Taxed if Parties Differ.

Where it is directed that costs shall be taxed in cases where the parties differ about the same, the party claiming the costs shall bring the bill of costs into the office of the taxing officer, and give notice of his having so done to the other party, and at any time within eight days after such notice such other party shall have liberty to inspect the same without fee if he thinks fit. And at or before the expiration of the eight days, or such further time as the taxing officer shall in his discretion allow, such other party shall either agree to pay the costs or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for costs; but where he makes no such tender, or where the party claiming the costs refuses to accept the sum so tendered, the taxing officer shall proceed to tax the costs; and where the taxed costs shall not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs. *British Columbia Rule 786.*

\$5 may be tendered to certain cases, and effect of. Where any petition in a cause 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 such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order 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. In any other cases in which a solicitor of a party served necessarily, or properly peruses any such petition, without appearing thereon, he is to be allowed a fee not exceeding the amount aforesaid. *British Columbia Rule 799.*

Where an originating summons, a petition, or a notice of motion is served, and notice is given to the party served, that in case of his appearance in court his costs will be objected to, accompanied by a tender of \$5 for costs, the person making

such payment shall be allowed the same in his costs if 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 considers the party entitled, notwithstanding such notice or tender, to appear in court: (1897), O.R. 1153, Nova Scotia Rule.

TERM FEES.

Ontario tariff item 113 is as follows:—

Fees after statement of claim, or where statement dispensed with, after filing writ, on defence, joinder of issue, trial, or argument before the court 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 court and the first day of the following sittings so fixed.

Term fees are taxable, and are guided by the dates of the old terms. A term fee is to be allowed for the steps mentioned in the above tariff item after the statement of claim.

THIRD PARTY COSTS.

A third party, who by his contract was obliged to indemnify the defendant, appeared at the trial and succeeded in reducing the damages to a sum already paid into court for the defendant. It was held that he was not entitled to costs against the plaintiff: *Williams v. S. E. Ry. Co.*, 26 W.R. 352.

The court has complete jurisdiction over the costs of third parties brought in under the provisions of the rule on that behalf; and may even order the plaintiff to pay the costs of third party: *Hansbury v. Drainage Board*, 12 L.R. 26.

The defendant may also be ordered to pay costs of third parties. See *Dawson v. Sheppard*, 49 L.J.Q.B. 529; L.T. 611; *Lewin v. Trimming*, 69 L.T. 511; *Ewing v. Toronto*, 34 Canada Law Journal 417; *Kelly v. Wade*, 14 P.R. 66; *Allen v. Mathers*, 9 P.R. 477; *Grantham v. Powell*, 1 P.R. 256; *Stacey v. McIntyre*, 5 P.R. 205; *Pacand v. McEwan*, 6 P.R. 20; *Robidon v. Harkin*, 2 P.R. 129.

Where on the trial of an action a nonsuit is directed; on appeal the nonsuit is set aside and a new trial granted. On the second trial the plaintiff obtains a verdict and judgment, the plaintiff is entitled to costs of the first trial and of the new trial: *Green v. Wright*, 46 L.J.C.P. 427.

Where it is ordered that the costs of the former trial are to abide the result of the new trial, if the successful party at the first trial succeeds on the new trial, he is entitled to costs of both trials. If the unsuccessful party succeeds, he is only entitled to the costs of the new trial: *Sherlock v. Barned*, 1 L.J.C.P. 11.

Where a jury is unable to agree and is discharged by consent of counsel, the party who claims the verdict on the second trial is not entitled to costs of the first trial: *Bostock v. N. S. Railway*, 18 Q.B. 777.

Also where a jury does not agree and is discharged by the judge, and the plaintiff afterwards discontinues, the defendant is not entitled to the costs of the first trial: *Wall v. L. & S. W. Railway*, 25 L.J. Ex. 93.

Where the plaintiff was improperly nonsuited, a new trial was granted without costs: *Runscall v. Hogg*, 3 Wils. 146.

When on the second trial, the jury found a verdict for the plaintiff, no order was made for costs, Rose, J., in *Copeland v. Blenheim*, 11 P.C. 54, held that the costs of the first trial were costs in the cause to the plaintiff, and were taxable without any special direction being governed by Rule 428, O.J.A., now *Consolidated Rule 1130*.

When the judge had misdirected the jury upon an important matter of fact, a new trial was granted without payment of costs: *Hain v. Davey*, 2 H. & W. 30.

Where in consequence of the omission of the judge to call the attention of the jury to a material feature in the case, and a wrong verdict was given in consequence thereof, the court impose the terms of the payment of costs on the granting of a new trial: *Gibbens v. Phillips*, 2 M. & R.Y. 238.

The costs of opposing an unsuccessful application for a new trial are costs in the cause.

Where a new trial is granted on payment of costs, such costs do not include expenses of briefs where the same will be used on the second trial: *Lord v. Wardie*, 6 D.P.

Where parties compromise a suit and no provision is made for the costs, the court will not hear the case for the purpose of determining the costs alone: *Nicholl v. Elfred*, 5 Jur. (N.S.) 264.

In a jury action the judge has power to order the plaintiff, who recovers a nominal sum, to pay the defendant's costs: *Harris v. Petherick*, 48 L.J. Q.B. 521.

At the trial the defendant obtained an order for the inspection of a vein in the plaintiff's claim upon the statement made that the vein was a continuation of a vein, the apex of which was within the limits of their own claim. The plaintiffs asked for an adjournment with a view of inspecting their own property, and, if possible, rebutting the defendant's claim, and an adjournment was allowed, but on terms, viz.:—That all costs occasioned thereby should be borne by the plaintiffs in any event on appeal from this ruling. It was held that such costs should abide the result of the issue to which the inspection related: *Iron Mask v. Centre Star*, 7 B.C.R. 66.

The judge has power to postpone or adjourn the trial, and may at, or after the trial, direct that judgment be entered, or may adjourn the costs for further consideration.

Motions to postpone the trial should be made, where applicable in Chambers, before the expense of preparing for trial has been incurred. The costs of postponing the trial on account of the absence of a material witness will be costs in the cause, if it can be shown that every effort was made to secure the attendance of such witness, but if the application is not made promptly, the party applying may be ordered to pay the costs of the application and adjournment: *Brown v. Porter*, 11 P.R. 250; *McDonald v. McMillan*, 22 Gr. 362.

When the hearing of an action is adjourned in order to allow parties to be added, the party who applies for the adjournment must pay all the costs incurred by the action having been in the paper for hearing, and not merely a fixed sum for costs of the day: *Lydall v. Martinson*, 5 Ch. D. 780; 37 L.T. 69.

Where an action is called on for trial and the plaintiff does not appear, the defendant is entitled to judgment with costs without proving that notice of trial has been served upon him. A judgment so obtained, if set aside, will be on payment by the plaintiff of the costs of the day and of the application: *Farrell v. Wall*, 36 L.T. 95; *James v. Crow*, 7 Ch. D. 410; 47 L.J., ch. 200; 37 L.T. 749; 26 W.R. 236; *Cockle v. Joyce*, 7 Ch. D. 56, not followed—as to requiring proof of service of notice of trial.

Costs of applications ordered to stand over until trial, and costs reserved to be disposed of at the trial, should follow the event of the trial without any special directions: *Hodges v. Hodges*, 25 W.R. 109.

Where the defendant claims to be entitled to contribution, or indemnity from, or any other relief over against any person not a party to the action, he can under the provisions of Rule 269, *et sequiter* by consent of a court or a judge, issue a third party notice. The court or judge is to decide all questions of costs as between the third party and other parties to the action, and may order any one, or more, to pay the costs of any other, or others, or give directions as to costs as the justice of the case, may require.

Where the plaintiffs brought action against the defendants to recover possession of certain lands, and the latter resisted the claim, and also served a third party notice upon H., claiming indemnity, and, thereupon, by order in chambers on the application of the defendants, H. was made a party defendant to the action, and the plaintiffs afterwards abandoned their claim to the lands :—*Held*, that the plaintiffs must pay H.'s costs : *Beard v. Credit Valley R. W. Co.*, 9 O.R. 616.

In an action for rent or royalties upon iron received by the defendants, they served a notice upon a third party claiming contribution from him. The third party appeared, and an order was made that he should be at liberty to defend the action as regarded the question between the plaintiff and defendants only, and to appear at the trial, call witnesses, cross-examine the witnesses called by the plaintiff and defendants, and to be bound by the findings. The third party delivered a statement of defence, which was directly against the plaintiff's statement of claim, except a portion thereof which stated that he was not a proper party, and that no right of contribution existed against him, but this portion was struck out at the trial upon his own application. The plaintiff was successful in the action :—*Held*, that the third party had adopted the position of one who was called upon by his own interest to defend the action and that he should not recover from the defendants who brought him in his costs of so defending it : *Wallbridge v. Gaujot*, 13 P.R. 463.

The defendants being sued as carriers for the loss of goods in transit under a contract between the plaintiffs and defendants, gave notice under Rules 107 and 108 (Con. Rules 328 and 329), to the third parties that they claimed indemnity from them, under a contract to which the plaintiffs were strangers; the third party appeared, and an order was made that they should be at liberty to assist in defending the action and should be bound by the result as regards the liability of the defendants to the plaintiffs. The plaintiffs were non-suited at the trial :—*Held*, that the plaintiffs were not liable for the costs of the

third parties, or the costs occasioned by joining them; nor were the defendants liable for such costs: *Tomlinson v. Northern R. W. Co. of Canada*, 11 P.R. 419.

Held, that the order of Armour, J. (11 P.R. 419), refusing the third parties their costs, was made in the exercise of a discretion, which, by sec. 52, O. J. Act, were not subject to review without leave, and as no such leave had been given, an appeal from the order was dismissed, with costs. The court directed that such part of the costs incurred by the third parties in establishing the defence as might properly have been incurred by the defendants should be allowed by the taxing officer.

Where the third party has been brought into an action by the defendant, and an order obtained by the latter directing that the question of indemnity as between the third party and himself be tried, after the trial of the action and oppose the plaintiff's claim so far as the third party is entitled against the defendant to costs up to and inclusive of the trial:—*Held*, however, that the disposition of such costs is in the discretion of the trial judge, whose order, by R.S.O., ch. 51, sec. 72, is not subject to appeal without leave:—*Held*, also, that the third party cannot be heard in the Divisional Court upon an appeal by the plaintiff from the judgment at the trial, and is entitled to no costs of such appeal: *Ewing v. City of Toronto*, 18 P.R. 137.

A third party, who, under contract to indemnify the defendant, obtained leave to appear at the trial, and then succeeded in his object of reducing the damages to a sum already paid into court by the defendant, was held not entitled to costs against the plaintiff: *Williams v. The South-Eastern Railway Co.*, 26 W.R. 352.

The court has no power to annul a direction in a judgment previously delivered, and a third party shall pay the costs of the interlocutory proceedings taken to bring him before the court, although by the judgment in the action it was ordered that he is dismissed from the action with costs to be paid by the defendants: *Beynon & Co. v. Godden & Sons*, 4 (C.A.), Ex. D. 246; 48 L.J. (C.A.), Ex. 80.

There is power to order a defendant to pay costs to a third party who appears in consequence of having been served by the defendant with a third party notice: *Dawson v. Shepherd, Grier third party*, 49 L.J., Q.B. 529; 49 L.T. 611; 28 W.R. 805; *The Yorkshire Wagon Co. v. The Newport and Abercarne Coal Co.* (5 Q.B.D. 268; 49 L.J., Q.B. 52; 42 L.T. 367; 28 W.R. 505), explained.

Where third parties were brought in and they brought in certain fourth parties, on the trial of the action, the plaintiffs were ordered to pay the costs of the third and fourth parties: *Witham v. Vane*, 42 L.T. 686; 28 W.R. 812.

A third party who has been brought into an action by the defendant, who obtained an order directing that the question of indemnity as between himself and the third party at the trial of the action. At the trial the plaintiff's action was dismissed. It was held the trial judge has full power over the costs of the trial, and his order by R.S.O., ch. 51, sec. 72, is not subject to appeal without leave.

Where the plaintiff appeals from the judgment delivered at the trial to a Divisional Court, the third party cannot be heard on the appeal, and is entitled to no costs of such appeal: *Ewing v. City of Toronto*, 18 P.R. 137. See also *Tomlinson v. Northern*, 11 P.R. 526; *Witham v. Vane*, 28 W.R. 812.

TITLE TO LAND BROUGHT INTO QUESTION.

Where the plaintiff's title to land is brought into question in such a manner as to oust the jurisdiction of the inferior courts. Even though the amount recovered ultimately is within the jurisdiction of the inferior courts the plaintiff is entitled to costs in the High Court scale: *Danaher v. Little*, 13 P.R. 361; *Tompkins v. Jones*, 22 Q.B.D. 599; *Worman v. Brady*, 12 P.R. 618. See APPEALS, and cases cited thereunder.

TRIAL.

Orders obtained on condition are deemed to be abandoned so far as it is beneficial to the party obtaining it unless the condition upon which it was obtained is performed: See *Carroll v. Booth*, 11 C.L.T. 84.

The judge at the trial cannot, of his own motion, give a direction depriving a successful party of his costs. It is not, however, necessary that counsel should be the first to speak; but if he is present to support the application, and if counsel on the other side is present to oppose it, that is sufficient: *Collins v. Welch*, 49 L.J. (App.) C.P. 260; *Marsden v. Lancashire and Yorkshire Railway Co.*, 50 L.J. (App.) Q.B. 318.

The application must be made at the trial. Such application would be considered to be made at the trial if formally made after the judge has left the court, to the officer delegated by the judge to take the verdict: *Baker v. Oakes*, 46 L.J. (App.) Q.B. 246; 35 L.T. 832.

So if the application is made an hour after the verdict, and while another cause is being tried, and the order is made the next morning after the judge had taken time to consider: *Kynaston v. Mackinder*, 47 L.J. (App.) Q.B. 76.

When no application to deprive a successful party of costs of an action tried before a jury has been made to the judge at the trial, a Divisional Court will entertain such application when made within a reasonable time: *Bowey v. Bell*, *Brook v. Israel*, *North v. Bilton*, *Siddons v. Lawrence*, 4 Q.B.D. 96; 39 L.T. 607.

UNNECESSARY COSTS.

The court or judge may at the hearing of an action or upon an appeal, application or proceeding, or any action or matter in court or Chambers, and whether the same is objected to or not, direct the costs of any writ, pleading, petition, affidavit, evidence, account, statement or other proceedings 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 containing 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 party by such unnecessary proceeding, matter or length, and in any case where such question has not been raised before and dealt with by the court or judge, the taxing officer may look into the same and (as to affidavits and 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. *Ontario Rule 1154*. See also *Manitoba Rule 942*.

Between party and party the taxing officer shall not allow the costs of proceedings (a) unnecessarily taken, (b) not calculated to advance the interests of the party on whose behalf the same was taken, (c) incurred through over-caution, negligence or mistake, unless he is of opinion that such proceedings were taken by the solicitor because in his judgment, reasonably exercised, they were conducive to the interests of his client. *Ontario Rule 1176*.

Between solicitor and client the taxing officer may allow proceedings taken as mentioned in above clauses (a) and (c) of this Rule, where he is of opinion that such proceedings were

taken by the solicitor because in his judgment, reasonably exercised, they were conducive to the interests of his clients and may allow the costs of proceedings taken as mentioned in clause (b), where the same were taken by the desire of the client before being informed by the solicitor that the same were unnecessary and not calculated to advance the interests of the client : *Snyder v Snyder*, 11 P.R. 142.

Boyd, C., makes the following remarks as to unnecessary proceedings : "This multiplication of summonses and orders in respect of the same subject matter is such a practice as I hope will not be repeated." In analogous circumstances Kelly, C.B., said that the proceedings were in fact oppressive and offensive although the plaintiff's attorney may not have endeavored to act unfairly : *Jackson v. Freeman*, 20 O.R. 683. Also *Guéret v. Young*, W.N. (1883) 216.

A motion to have a pleading, petition or affidavit taken off the file for scandal, or to have scandalous matter expunged, may be made to a court or a judge at any time before the hearing of the case or matter. See *Ontario Rule 297*.

The disallowance of costs of unnecessary matter in an affidavit or any pleading is governed by *Ontario Rule 1154*, cited above.

Where a plaintiff delivers a statement of claim without being required to do so the court or a judge may make such order as to the costs occasioned thereby as shall seem just if it appears that the statement of claim was unnecessary or improperly delivered, and if no order be made by the court or a judge the taxing officer is to have the same duty. The propriety of making any examination for the purpose of discovery may also be enquired into by the taxing officer, either with or without the direction of a judge, and if it appears to have been had unreasonably, vexatiously, or of unnecessary length, the costs occasioned by such examination are to be borne wholly, or in part, by the party in fault. The costs of obtaining an order for production and of any inspection of documents, or notice thereof, are not to be allowed unless it is shown to the taxing officer that there were good and sufficient reasons for taking such order, giving the notice or making the inspection. Where costs are to be borne by another party costs are to be allowed which do not appear to the taxing officer to have been necessary or proper defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence or mistake. The court or judge at the hearing, or

upon proper application, may direct the costs of any pleading, 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 is to 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 judge the taxing officer may look into the same (and, as to evidence, although the same may be entered as read in any "decree or order") for the purpose aforesaid, and thereupon the same consequences are to ensue as if he had been specially directed to do so. See *O'Brien v. Bull*, 19 C.L.T. 211; *Robertson v. Grant*, 3 Chy. D. 207; *Cutler v. Morse*, C.L.J. 540. See also *Ontario Rules 1147 and 1148* and *Manitoba Rules 939, 940 and 942*. See also the following Nova Scotia Rule:

If in any case it appears to the court or a judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the court or judge may call on the solicitor of the person by whom such costs have been so incurred to show cause why costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case require) why the solicitor should not pay to his client any costs which the client has been ordered to pay to any other person, and thereupon may make such order as the justice of the case requires. The court or judge may refer the matter to the taxing officer for inquiry and report, and direct the solicitor in the first place to show cause before the taxing master, and may also appoint a solicitor to attend and take part in such inquiry. Such notice, if any, of the proceedings or order shall be given to the client in such manner as the court or judge directs. Any costs of the solicitor so appointed and attending shall be paid by such parties or out of such funds as the court or a judge directs. (E. 986.)

Under *British Columbia Rule 233* the plaintiff can have a point of law raised on the proceedings disposed of before trial,

bu
it
so
wh
les

ad
act
ma

tiff
he
anc
anc
We

uni
v. A

abc
ord
the
soli
cost

and
pay

unn
cha
case

has
betw
inte
his c

the
be s
an a

inju

but, according to the decision in *Hall v. The Queen*, 7 B.C.R. 120, it appears that there is no duty cast on the defendant to do so, so where the defendant succeeds at the trial on a point of law which could have been disposed of before trial he is nevertheless entitled to the usual costs of trial.

Where two or more actions or proceedings are instituted for administration or partition or sale, all or any of the costs of an action or proceeding which has been unnecessarily prosecuted may be disallowed. *Ontario Rule 1147.*

If, instead of applying for a judgment on notice, the plaintiff unnecessarily issues a writ of summons for administration, he will not be entitled to the extra costs thereby occasioned, and such costs cannot be recovered even as between solicitor and client: *Sovereign v. Sovereign*, 15 Gr. 559; *Allenby v. Weir*, 13 P.R. 403.

If it can be shown that an executor brought an action unnecessarily, he will not be allowed any commission: *Graham v. Robson*, 17 Gr. 318.

Where it can be shown that the commission provided by the above rule would be clearly inadequate, the judge has power to order the costs to be taxed. It would also appear that where the commission is more than sufficient to remunerate the solicitor for the work done, the judge has power to order the costs to be taxed. *Ontario Rule 1146.*

Where a motion was made to a court instead of Chambers, and was adjourned to Chambers, the applicant was ordered to pay the costs: *Lee v. Mimico Real Estate Co.*, 15 P.R. 288.

Where a solicitor negligently or ignorantly takes some unnecessary proceedings, the taxing officer shall disallow all charges made in connection therewith. The court will in all cases order a review of taxation.

Where the taxing officer has made an error in taxation or has wrongly construed an order as to the division of costs between the parties, however, the court will not ordinarily interfere with the taxation of costs by the taxing officer, unless his decision is shown to be erroneous in principle.

Where an objection might have been raised by a demurrer, the costs of defence were given as of a successful demurrer, to be set off against the costs of a judgment on the pleadings for an admitted debt: *Wallis v. Skain*, 21 O.R. 532.

The plaintiff was ordered to pay the costs of an interim injunction obtained by him because the facts proved at the trial

showed no anticipation of such immediate and serious damages as to justify the application for it: *Sklitzskyn v. Cranston*, 22 O.R. 590.

Action instead of Motion. The order and decision of Robertson, J., 13 P.R. 403, upon appeal from taxation of costs between solicitor and client, disallowing to the solicitor the additional costs occasioned by their bringing on their client's behalf an action for administration where a summary application would have sufficed, was affirmed by the Court of Appeal, Burton, J.A., dissenting.

In the administration action the additional costs incurred by the defendants in that action were allowed to him by way of set-off against the costs awarded to the plaintiff:—

Held, that no relief could be obtained by the client upon a proceeding for taxation of costs in respect of the loss suffered by her in virtually paying these costs to the defendants: *Re Allenby & Weir*, 14 P.R. 227.

The costs of printing unnecessary material disallowed: *Bryce v. Lontel*, 21 A.R. 100.

Where a motion to stay proceedings was made in court, it was enlarged into Chambers, and costs were ordered against the applicants: *Lee v. Mimico Real Estate Co.*, 15 P.R. 288; *Sutherland v. Young*, I. 94 (Manitoba); *Freehold v. McLean*, IX. 15 (Manitoba). See TAXATION, and see APPEALS.

VEXATIOUS PROCEEDINGS.

All costs which have been vexatiously and improperly incurred by a successful party will be disallowed on taxation.

The costs of the cause should, as a general rule, follow the result, but to this rule an exception will be made where the party has established his objection by means of an unnecessary degree of litigation; as, for example, where the plaintiff failed to establish his case, but encumbered the suit with an unnecessary multitude of witnesses and with many irrelevant depositions. He was ordered to pay the costs of the depositions, although the action was dismissed without costs as to the rest of the case: *Moore v. McKay*, Beav. 282. See UNNECESSARY PROCEEDINGS, and cases cited thereunder. See TAXATION, and cases cited thereunder.

VESTING ORDERS.

Where one of the vendors was absent from the jurisdiction, in consequence of such the execution of the conveyance prepared by the purchaser could not be procured, the purchaser was held to be entitled to the costs of obtaining a vesting order: *Re McMorris*, 3 Chy. Ch. 430. The costs of a motion for a vesting order were ordered to be paid out of the purchasing money in *Lawrason v. Buckley*, 3 Chy. Ch. 270. See also *McMaster v. Kempshall*, 1 Chy. Ch. 329. See APPEALS.

VOUCHERS.

In passing accounts in the Surrogate Court it is not necessary to file the vouchers. Where the executor desires for his own protection and for the safe custody of the vouchers to have them filed, a written requisition should be given by him.

Where the vouchers are filed, the clerk is entitled to the ordinary fees for filing accounts.

The taxing officer should not tax any disbursements for which a proper voucher is not produced on taxation, unless he is satisfied by other evidence that the disbursement was properly made. The taxing officer should also compel any parties producing vouchers for payment of disbursements to file same: *Wilson v. Moulds*, 4 P.R. 101. See DISBURSEMENTS.

VENDOR AND PURCHASER.

In *Isaacs v. Lowell* (1898), 2 Ch. 285, the plaintiff had purchased land subject to a condition that if any requisitions were made which the vendor should be unable to remove, "notwithstanding any intermediate negotiation," the vendor should be entitled to rescind, and the purchaser to get back his deposit. Nothing was said in the condition as to litigation. The plaintiff objected that the defendant had misrepresented that the property was freehold, when in fact title was only shown to a term under a lease, and on this ground the action was commenced for rescission, and return of the deposit, and payment of expenses for investigating the title. Before entering an appearance the defendant gave notice rescinding the contract and that he had authorized the auctioneer to return the deposit, which the plaintiff refused to accept. An appearance was then entered and the plaintiff proceeded with the action. Byrne, J., held that, notwithstanding the commencement of the action, the defendant was entitled to rescind the contract, the alleged misrepresentation not being established.

Under the circumstances the plaintiff was held entitled to the deposit, and the costs up to the action subsequent to the notice.

The plaintiffs brought their action alleging that in consideration that the plaintiffs would pay to the defendants their charges for the proper supply of pure water for the purpose of supplying power to the plaintiffs' hydraulic elevator the defendants undertook and agreed to supply the plaintiffs with such water; that in supplying such water the defendants negligently caused and allowed such water so furnished by them during the six years prior to the commencement of this action to be impregnated with sand and such deleterious matter held in suspension therein (said water being in such condition to the knowledge of defendants), that it so greatly damaged the said apparatus of the plaintiffs' elevator that the same became totally useless to the plaintiffs, etc., whereby, etc.

The defendants pleaded not guilty by statute, and that it was not expressly alleged that the act complained of was done maliciously and without reasonable or probable cause; that the act complained of was done by them in the execution of their office, etc.; that the act was not caused within six months; and that no notice of action had been given, setting up 35 Vict., ch. 79; 41 Vict., ch. 41, secs. 1-3; R.S.O. ch. 73, secs. 1, 13, 14, 15.

Held, affirming the judgment of Robertson, J., that the action being one for breach of contract none of the statutory defences set up were applicable or could be pleaded: *Scottish Ontario Land Co. v. Toronto*, 33 Canada Law Journal 199. See APPEALS, and cases cited thereunder.

An order was made by the court delegating the powers exercisable by the court for the purpose of winding up a company to a referee, pursuant to R.S.C. ch. 129, sec. 77, as amended by 52 Vict., ch. 32, sec. 20 (D.):—

Held, that power was delegated to the referee to order security for costs and to stay proceedings till security should be given by a shareholder resident out of the jurisdiction who intervened:—

Held, also, that the liquidator and others opposing the applications made by the intervening shareholder were not barred of their right to security by not applying till after the original applications of the shareholders had been dismissed and appeals taken; but that the security should be limited to the costs of the appeals: *Re Sarnia Oil Co.*, 14 P.R. 335.

In a proceeding for the winding up of a company, a solicitor who is acting for claimants whose claims must be contested by the liquidators, cannot obtain the sanction of the court to his acting also as a solicitor for the liquidators. Nor will the court sanction the appointment of a special solicitor to act for the liquidators in the matter of the contested claim. The winding up must be prosecuted by one disinterested solicitor, whose services will not be divided by the assertion of antagonistic claims: *Re Charles Stark Co.*, 15 P.R. 471. See also *Re Drury Nickel Co.*, 16 P.R. 525.

An order was made by a County Court under R.S.O. ch. 183, for the winding up of the companies, and a liquidator was appointed, who brought in a list of contributories. The contributories showed cause to their names being settled upon the list, and the court made an order in the case of each of them reciting that it appeared there was no jurisdiction to make the winding-up order and that all proceedings were *caram non judice*, and there was no jurisdiction, the court being an inferior one, to order the liquidator or companies to pay the costs.

And even if there was jurisdiction in the circumstances of this case it should not have been exercised against the liquidator.

Ontario Rule 1256 does not apply to proceedings under the Winding-up Act, either by virtue of sec. 34 of the Act or otherwise.

Remarks to multiplicity of orders taken out in the matters: *Re Cosmopolitan Life Association*, 15 P.R. 185. See LIQUIDATION, and cases cited thereunder.

WANT OF PARTIES.

A party who applies for an adjournment in order to allow parties to be added, must, as a general rule, pay all costs incurred thereby: *Lydall v. Martinson*, 37 L.P. 69; *Mill v. Kirwin*, Jac. 163.

If the defendant does not make the objection in hearing, he is generally deprived of costs.

Where the defendants admitted by their answer that all persons interested were parties to the suit, and at hearing objected for want of parties, and the objection prevailed, it was held that having misled the plaintiff they ought to pay him the costs of the day: *Price v. Barrington*, 2 Beav. 285.

WITNESSES.

A public official, or other witness subpoenaed or called upon to produce before court, or a judge or officer, any public or other document shall not be entitled to more than ordinary witness fees, unless the court or a judge, or officer otherwise orders. 57 Vict., ch. 25, sec. 1 ; 58 Vict., ch. 12, sec. 127 ; 58 Vict., ch. 18, Sched. (20), and Rules of 4th January, 1896. Rule 1458 last clause amended. *Ontario Rule 1151.*

A solicitor, who is counsel in a case, or a partner to the counsel, cannot be allowed witness fee.

Witness fees are costs incidental to *remanets*, and are properly taxable to the successful parties.

Where the services of an interpreter are required by the court, such interpreter is entitled to the same fees as any other witness, and his fees are properly taxable as costs.

All officials of the court attending court as witnesses, are only entitled to the ordinary witness fees.

Any number of names may be included in one subpoena, and no more than one subpoena 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.

Held, that where a solicitor or counsel of one of the parties to a suit has put his name as a witness to a deed between the parties, he ceases, in respect of the execution of the instrument, to be clothed with the character of a solicitor or counsel, and is bound to disclose all that passed at the time relating to such execution : *Robson v. Kemp*, 5 Esp. 52, and *Crawcour v. Salter*, 18 Ch. D. 30, followed ; *Magee v. The Queen*, 3 Ex. C.R. 304.

Witness fees must be paid before taxation, and should be paid before the affidavit of disbursements is made.

The taxing officer has only the power to allow the monies actually and properly disbursed : *Ham v. Lasher*, 24 U.C. Q.B. 357.

Where a witness, if subpoenaed and paid witness fees by both parties to the action, the rule was established in *McLean v. Evans*, 3 P.R. 154, and since followed, that the successful party is entitled to tax the costs of the witness against the other party.

No witness fee can be allowed for a witness who was not present and examined at the trial, if it can be shown that when the case was entered for trial he was a necessary and material witness, but that owing to the course that the case

to
wi
pa
as
ha
ca
th
th
ta
un
pu
oth
he
of
wit

upo
oth
wit
R.S

of s
Har
beca
The
at
seve
abor
mat
the
thes
exer
Rule
Bur.
J

exan
trial,
plain
show
atten
incur
as pr
13 P.
co

took at the trial it became unnecessary to examine him, his witness fees can be taxed against the opposite party. The party subpoenaing a witness must exercise reasonable discretion as to the time for which the witness should be subpoenaed, having regard to the position of the case on the docket. If the case for which he was subpoenaed was, for example, No. 40 on the docket, and the witness was subpoenaed for the first day of the sittings, the full time of his attendance at court cannot be taxed. A barrister or solicitor is not entitled to witness fees unless he can show that he attended the court solely for the purpose of giving evidence in the court, and that he had no other business in court, and would not have attended court had he not been called upon to give evidence in the case. Sec. 120 of the Judicature Act, R.S.O. ch. 51, 1897, regulates the witness fees to be paid to public officials, etc., and is as follows:—

Any public official or other witness subpoenaed or called upon to produce before any court or tribunal any public or other document shall be entitled to no more than ordinary witness fees, unless the court or other tribunal otherwise order. R.S.O. ch. 180, sec. 40.

A taxing officer refused to allow the plaintiffs the expenses of seventeen witnesses who were subpoenaed to attend a trial at Hamilton, which proved abortive, the trial being postponed because the defendants had not obeyed an order to produce. The defendants were ordered to pay the costs of the hearing at Hamilton, rendered nugatory by the postponement. The seventeen witnesses were subpoenaed to be examined at the abortive trial, and were examined at the adjourned trial, upon matters which the judge held could not be interfered with by the court:—*Held*, that in refusing the costs of subpoenaing these seventeen witnesses, the taxing officer did not erroneously exercise the discretion given him by Rule 442 O.J. Act (Con. Rule 1214): *Christopher v. Noxon*, 10 P.R. 149. See *Tait v. Burns*, VIII. 19 (Manitoba).

The plaintiff's own physician attended on him during an examination *de bene esse*, and was called as a witness at the trial, when he stated what his charges for attendance on the plaintiff would amount to:—*Held*, that there being nothing to show that he did not include in his statement the charges for attendance at the examination, they were taken to have been incurred in the verdict, and would not be taxed to the plaintiff as part of the costs of the action: *Carty v. City of London*, 13 P.R. 285.

The plaintiff, not being bound to rely on the admission of the defendants on their examination for discovery, the costs of procuring the attendance of a witness to prove what was then admitted, should have been taxed: *Alexander v. School Trustees of Gloucester*, 11 P.R. 157.

To be allowed the costs of a witness attending at a trial, but not called, it is necessary to show four things:—(1) That he was a necessary and material witness. (2) That he was in attendance. (3) What he was brought to depose to. (4) The reason why he was not examined: *McMicken v. Ontario Bank*, VIII. 513 (Manitoba).

Where the 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 taxation was re-opened upon payment of costs, and the taxing officer was directed to reconsider the allowance of witness fees: *Connec v. North American Railway Contracting Co.*, 13 P.R. 433.

By judgment on further directions the plaintiffs were awarded the costs of the action and reference. Upon appeal from the taxation of such costs, the defendant contended that the plaintiffs should not be allowed the costs of attendance and witnesses in the Master's office relating to items in the account in question, as to which the plaintiffs failed:—*Held*, that the plaintiffs were entitled to all the costs properly, fairly and reasonably incurred upon the reference, but not to costs of unnecessary proceedings, or witnesses; the costs of witnesses called to establish something on which the party calling them failed were in the discretion of the taxing officer.

Where two suits are brought for the same cause of action by the same plaintiffs against different defendants, but the pleas are the same, and the witnesses the same in both suits, and notice of trial is given in both for the same time, the witnesses are entitled to fees only in one of the suits: *The Nova Scotia Land and Gold Crushing Co. v. Bolling*, 1 Old. 723 (Nova Scotia). See also *Nevill v. Garrett*, 2 Thom. 4 (Nova Scotia); *Priest v. Russell*, James 58.

The sum of \$5 shall be paid to every surveyor summoned to attend any civil or criminal court for the purpose of giving evidence in his professional capacity as a surveyor for each day that he so attends, in addition to his travelling expenses, if any,

to be taxed and paid in the manner by law provided with regard to the payment of witnesses attending such court.

Where a witness, although properly subpoenaed, does not attend the trial, his witness fees cannot be taxed against the opposite party. However, the party subpoenaing may recover any conduct money paid him. Witness fees in *quo warranto* proceedings are governed by the same rule as in other cases.

By sec. 40 of R.S.O. ch. 180, surveyors who are summoned to attend any civil or criminal court for the purpose of giving evidence in his personal capacity as a surveyor, for each day he so attends is entitled to be paid \$5 in addition to his travelling expenses, to be taxed and paid in the manner by law provided with regard to the payment of witnesses attending such court. The Ontario tariff limits the witness fees to be paid to a surveyor to \$4. See DISBURSEMENTS. See also the following cases: *Bull v. Crompton*, 11 P.R. 256; *McGannon v. Clarke*, 9 P.R. 555; *Logan v. Kirk*, where a counsel fee to a counsellor in British Columbia was held to be taxable on a party and party taxation: *Ham v. Lasher*, 24 U.C.Q.B. 357; *Alexander v. Gloucester*, 11 P.R. 157; *Rondot v. Monetary Times*, 18 P.R. 141; *Harding v. Knust*, 15 P.R. 80; *McLean v. Evans*, 3 P.R. 154; *Carty v. London*, 13 P.R. 285. In *Dominion Co. v. Stimson*, 9 P.R. 177, the costs of a commission to take evidence outside the jurisdiction where the evidence so taken was not used at the trial were disallowed. Although as a general rule witnesses are not allowed for attendance for the day set for the trial, a material witness is going abroad, but is subpoenaed for the trial, his witness fees shall be paid. See *Harvey v. Divers*, 16 C.B. 497; *Potter v. Rankin*, L.R. 5 C.P. 518. In *Christopher v. Noxon*, 10 P.R. 149, where the plaintiff subpoenaed witnesses to attend a trial which was postponed on account of the defendant's default, and the defendant was ordered to pay the costs of the day. At the trial subsequently the witnesses were examined and their evidence proved to be immaterial, the costs of the attendance at the abortive trial were disallowed.

Where witnesses are not called upon to give evidence at the trial the *onus* is upon the party subpoenaing them to show that they were material witnesses, and in order to have their witness fees allowed he must give satisfactory reasons to the taxing officer for not calling them: *East Stonehouse v. Victoria Brewery*, 73 L.T. 54; *Carlisle v. Roblin*, 16 P.R. 328; *McLean v. Evans*, 3 P.R. 154.

A subpoena without a tender of expenses will not bring a witness into contempt, though he comes to the assizes and refuses to be sworn: *Bowles v. Johnson*, 1 W. Bl. 36.

The court will not grant an attachment against a witness for not obeying a subpoena to attend at a trial unless the whole expenses of the journey and the necessary stay at the place of trial are tendered at the time of serving the subpoena: *Fuller v. Prentice*, 1 H. Bl. 49.

A witness is not bound to appear upon his subpoena and give evidence before the examiner unless his reasonable expenses to and from the place of examination and of his stay there are tendered with subpoena: *Brocas v. Lloyd*, 23 Beav. 129.

A witness was taken to the assizes and there kept at the plaintiff's expense until the day of the trial when she refused to go into court without first being paid a certain sum:—*Held*, that, to entitle the plaintiffs to move for an attachment against the witness for not attending pursuant to her subpoena, they were bound to show that a reasonable sum had been tendered to the witness for her conveyance home: *Newton v. Harland*, 1 Scott (N.R.) 502.

One who is subpoenaed as a witness and attends at the trial, but there refuses to give evidence unless his expenses are paid, and is thereupon not examined, may yet maintain an action for his necessary expenses of attendance against the party who subpoenaed him: *Hallet v. Meares*, 13 East. 15.

A witness who, in obedience to a subpoena, attends a trial in a civil action, may, without any express contract, maintain an action for his expenses against the party who subpoenaed him, the fact of his attendance being evidence from which the jury may infer a contract: *Pell v. Daubney*, 5 Ex. 955.

A witness who is subpoenaed by both parties in a cause is entitled to have all his expenses paid by the party who calls him at the trial, although the other party may have been the first who subpoenaed him: *Allen v. Yocall*, 1 Car. & K. 315.

In an action by B. against S., to be tried in London, the plaintiff was subpoenaed as a witness by both parties. On the service of the subpoena by B. the plaintiff enquired whether he might return to Bath until the following week, but was told he must use his own discretion. S. gave his permission to the plaintiff to return to Bath. The verdict on that trial was found for S. The plaintiff was paid by the attorney of S. for his expenses and loss of time during the eleven days which he

re
sh
b
ta
pl
su
fo
H
of
B.
an
Mo

ex
his
apl
of
be

rule
was
till
allo
was
mus
witi
was
ciat
und
cost
trali
2
surv
befor
affid
never
to gi
he c
shall
exper
subse

remained in London with an understanding that if any part should be disallowed on taxation the part so disallowed should be refunded by the plaintiff to the attorney of S. On the taxation of S.'s costs the Master allowed for six days only of plaintiff's attendance. Thereupon the plaintiff refunded the sum disallowed by the Master and brought an action against B. for his expense and loss of time during the other five days:—*Held*, that the refunding of the sum disallowed to the attorney of S. did not take away the plaintiff's right of action against B.: *Hale v. Bates*, Bl. & El. 575.

It is not a general rule that parties, if witnesses, are to have an allowance for their attendance: *Dowdell v. Australian Royal Mail Steam Navigation Co.*, 3 El. & Bl. 902.

The simple fact of a successful party to an action being examined as a witness is not sufficient to entitle him to recover his expenses as a witness against the opposite party, and if it appears that his attendance was unnecessary or for the purpose of superintending the conduct of the cause, such costs will not be allowed: *Howes v. Barber*, 18 Q.B. 588.

A plaintiff obtained a verdict. The defendant obtained a rule *nisi* for a new trial, which was discharged. The plaintiff was a witness in his own cause, and he remained in this country till after the rule *nisi* was discharged. On taxation the Master allowed the plaintiff subsistence money from the time the rule was granted till it was discharged:—*Held*, that as the Master must be taken to have found that the plaintiff was a necessary witness, that he could not have attended a second trial if one was ordered unless he remained, and that his remaining incapacitated him from earning his subsistence, the detention might, under those special circumstances be considered as part of the costs of the rule, and the allowance was right: *Dowdell v. Australian Royal Mail Steam Navigation Co.*, 3 El. & Bl. 902.

A party to a suit, who describes himself as an engineer and surveyor, makes an affidavit and is subpœnaed as a witness before the examiner by the defendants to give evidence on such affidavit. A mistake is made in the day named. The witness nevertheless attends, and on the two days following, but refuses to give evidence because three guineas only are offered him, and he claims five. An order is then obtained, *ex parte*, that he shall attend within four days and give evidence at his own expense or stand committed. He attends and is examined, and subsequently moves to discharge or vary such order:—*Held*,

that he is entitled to one guinea per day for the first three days but nothing for the last day, and no costs given: *Nakes v. Gibbon*, 26 L.J. ch. 208.

A plaintiff having been brought up by *habeas corpus* to give evidence in one cause, when at the assizes gave evidence in another cause against the same defendant. Having succeeded in the first and failed in the second cause:—*Held*, that, on taxation of the costs of the first cause, he was entitled only to one moiety of the costs of the *habeas corpus*: *Griffin v. Hoskyns*, 1 H. & N. 95.

In an action for goods sold, the delivery having been proved by the plaintiff's carman, the defendant's wife and servants were called to prove that the goods had been paid for on delivery, the latter swearing that they had on each occasion paid the carman, having received the money for that purpose, sometimes from the defendant's wife and sometimes from the defendant himself, and the former that as to proof she had given the money to the servants only for the purpose of making the payments. On the trial the defendant was in court, but was not called as a witness until observations had been made by the plaintiff's attorney on account of his not being put into the box. A verdict having been found for the defendant, and the Master having declined to allow him the costs of his attendance, the court directed a review, holding that the defendant's attendance as a witness was, under the circumstances, advisable and proper, and it did not lie in the plaintiff's mouth to say that it was not necessary: *Flower v. Gardiner*, 3 C.B. (N.S.) 185.

If a party to a cause is examined on his own behalf the Master may allow for his maintenance during the time of his detention for the purpose of giving evidence, as in the case of any witness, if his testimony, in the Master's opinion, was material and necessary, and if he attended for the purpose of being examined as a witness and not merely to superintend the cause. *Howes v. Barber*, 18 Q.B. 588.

An accountant employed as a skilled witness to give evidence in support of the claim, though entitled to a reasonable allowance for his time and expenses in preparing his evidence by an examination of the books, is not entitled, upon party and party taxation, to his charges for balancing and putting the books into shape for the purpose of supporting the claim: *Laffitte & Co., In re Laffitte's Claim*, 44 L.J. ch. 633.

When, in an action involving questions of account, it becomes necessary for one party to employ an accountant to examine the books of his opponent for the purpose of his case, although he is afterwards successful in the action, yet he will not be allowed the costs in respect of the accountant's charges for such examination. Such costs fall within the general Rule by which the expenses of qualifying a witness to give evidence are costs of the party whose witness he is. And it makes no difference that the accountant is to be appointed by an indifferent person, instead of by the party on whose behalf he is employed: *Nolan v. Copeman*, 42 L.J., Q.B. 44.

The expense of an accountant, employed with reference to and pending the suit, does not come under the general denomination of costs, and will not be allowed on taxation: *Small v. Atwood*, 1 Y. & Coll. 53.

Where there is an order to tax a bill, as between attorney and client, or attorney and agent, and no reservation of the question of retainer or liability, the Master has, nevertheless, jurisdiction to consider whether any item is a proper item of charge, and is not confined merely to the question of amount. And if the agent, having attended as a witness, has charged for his attendance something beyond the ordinary charge of a witness, the Master will be justified in disallowing such extra charge, unless there is some special contract to pay a reasonable remuneration, in which case it will be for the Master to say what is reasonable: *Sollery v. Flewker*, 27 L.J. Ex. 11.

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

On taxation of costs as between party and party the Master has a discretion to allow the expense of employing an interpreter to assist a foreigner in preparing instructions for his answer, but such allowance ought not to include the tavern or travelling expenses of an interpreter brought to this country for the special purpose: *Shrewsbury (Earl) v. Trappes*, 31 L.J. ch. 680.

A professional witness is entitled to his expenses on the scale allowed to persons of his profession, although not called to give professional evidence: *Parkinson v. Atkinson*, 31 L.J., C.P. 199.

A plaintiff will not be allowed his expenses in the construction of a model, nor a compensation 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 have safely proceeded to trial without their testimony : *Bayley v. Beaumont*, 11 Moore, 497.

In a patent suit in which the plaintiffs after the briefs were delivered, but before the hearing, took the common order dismissing their bill with costs:—*Held*, that they were entitled to an allowance in respect of the charges of scientific witnesses, and that such allowance was not limited by the rules of taxation at common law, and also that they were entitled to an allowance in respect of the cost of a model, but the court followed the Master's decision as to amount : *Batley v. Kynock*, 44 L.J. ch. 565.

Where witnesses were engaged several days in searching for a defendant in order to identify him upon a trial, although notice was given requiring him to be present at a place and time appointed, as this was only a mode of qualifying witnesses to give evidence, the plaintiff was not entitled to the costs of his witnesses in respect of the time they have been so engaged : *Small v. Batho*, 1 B.C.C. 443.

The expenses of surveying and taking levels in order to ascertain whether a weir had been improperly raised to the prejudice of the plaintiff's water-mill will not be allowed : *Ormerod v. Thompson*, 16 M. & W. 869.

Where foreign witnesses appear to be domiciled in this country they are not entitled to the expenses of their return home : *Lopes v. DeTastet*, 7 Moore, 120.

Reasonable allowances in costs may be made for the loss of time of a necessary foreign witness who is not accessible to a subpoena and who will not attend without compensation : *Loneragan v. Royal Exchange Assurance Co.*, 1 D.P.C. 233.

It is improper to examine in chief as to particular items of the account, the defendant being an accounting party, or to examine in chief as to the particular acts of wilful default in not receiving rents, the defendant being bound to account for the wilful default simply by reason of the nature of his relation to the plaintiff. Such evidence may, however, be entered as read, but the plaintiff must pay the defendant the costs of it : *Hamilton v. McCormick*, 3 Jo. & Lat. 183.

Where plaintiff not only failed to establish his case by evidence, but also incumbered the suit with an unnecessary multitude of witnesses and with a body of very irrelevant depositions,

he must pay the costs of the depositions, although the bill not being vexatious was dismissed without costs as to the rest of the cause: *Moore v. M'Kay*, Beat. 282.

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.

The Master is, in general, the sole judge of what witnesses shall be allowed on taxation, and, therefore, when he had in an action of libel disallowed all witnesses to prove innuendoes, the court refused to interfere to make him review his taxation: *Skelton v. Seward*, 1 D.P.C. 411.

On taxation of costs it is a general rule to disallow the expenses of a witness rejected by the judge at the trial as between party and party: *Galloway v. Keyworth*, 15 C.B. 228.

The circumstances of witnesses not being called at the trial is no ground for disallowing their expenses provided the Master is satisfied that the attendance was reasonably necessary: *Morison v. Harmer*, 5 Scott 410.

If a plaintiff subpoenas witnesses, and remunerates them accordingly, and they have been previously subpoenaed by and received their expenses from the defendant, which circumstance they conceal from the plaintiff, the court will allow the latter the expenses he has paid those witnesses for their attendance although they were not called for him at the trial, on the ground that such payment was obtained by fraud: *Benson v. Schneider*, 1 Moore 76.

To an action for refusing to deliver goods into the plaintiff's lighter, the defendant pleaded that, though in the notice of delivery he was required to deliver them upon tender of the bills of lading and freight, no bills of lading or freight were tendered; on which issue was joined:—*Held*, that the plaintiff, who had a verdict, was not entitled to the costs of witnesses in attendance to prove that it was not customary to tender the bills of lading on applying for goods nor to pay the freight till some days after the delivery: *Jones v. Tobin*, 4 Bing. (N.C.) 123.

The charges for "instruction for brief," for "scientific witnesses qualifying themselves to give evidence," for "copies of documents furnished to counsel," and for "refreshers to counsel," are purely in the discretion of the Master: *Turnbull v. Janson*, 47 L.J.C.P. 384.

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.

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.

A declaration for a malicious prosecution for perjury, in one count, set out ten assignments of perjury, which were alleged to have been prosecuted maliciously and without probable cause at the trial, the plaintiff failed in proving want of probable cause as to nine of the assignments. He obtained a verdict with damages on the tenth assignment:—*Held*, that he was not entitled to the costs of witnesses called to give evidence of want of probable cause as to those nine; and that the defendant was not entitled to the costs of witnesses subpoenaed by him to show probable cause as to those assignments: *Delisser v. Towne*, 4 P. & D. 644.

In a suit for specific performance the plaintiff, after expiration of the time prescribed, obtained liberty to cross-examine the defendants at the hearing, and they accordingly attended at the hearing for the purpose, but the plaintiff declined to cross-examine them:—*Held*, that, although the plaintiff was entitled to the general costs of the suit, he should be disallowed all costs in reference to the cross-examination and pay the expenses of the witnesses so attending: *Guifoyle v. Hutchison*, Ir. R. 8 Eq. 289.

In an action on a bill of exchange it became necessary to call two clerks of the plaintiff's attorney to account for the loss of the bill, which occurred through their negligence, in order to let in secondary evidence of its contents. The Master having disallowed the costs of these witnesses, on the ground that their attendance was solely occasioned by their own negligence:—*Held*, per Pollock, C.B., and Martin, B., that he was correct in so doing; but per Alderson, B., and Platt, B., that he was incorrect, the true criterion of taxation being whether the evidence was necessary for the plaintiff at the time of the trial: *Matthews v. Livesley*, 11 Ex. 221.

When subpoenas *duces tecum* have been directed by counsel

and are necessary to enforce the production of documents, they should be allowed: *Jessop v. Cusack*, 25 L.R., Ir. 244.

It is a question for the discretion of the Master whether a witness ought to be allowed for the whole time of his attendance at the assizes, or only a portion of it; but, where the Master has decided upon it the court will not review his decision: *Platt v. Greene*, 2 D.P.C. 216.

The Master in taxing the expenses of witnesses according to a certain scale cannot allow more than is actually paid for their travelling expenses: *Radcliffe v. Hall*, 3 D.P.C. 802.

In the absence of special reasons witnesses should be in attendance on the day fixed for trial and from day to day while the case appears in the list for trial until the case is heard, and the costs of such attendance should be allowed: *O'Meara v. Barry* (1895), 2 Ir. 454.

WRIT OF SUMMONS.

In *Sparks v. Purdy*, 15 P.R., it was held that a writ of summons was "a pleading or other document" within the meaning of Rule 265, and only four copies can be taxed. The four copies covered all copies required during the course of the litigation and extends to copies of the writ of summons or copy of pleadings in the briefs.

The costs of issuing a writ of summons cannot be escaped by the defendant by his tendering the amount sued for before service but after the issue of the writ: *O'Malley v. Killmallock*, 22 L.R. 326.

Under item 16 of the Ontario tariff a copy of the special indorsement on a writ of summons should be counted in the folios and allowed for as a part of the writ and endorsement. Where the copy of the writ of summons including all necessary indorsements, notices, etc., thereon, exceeds four folios, 10c. a folio should be allowed for each additional folio. This not only includes all indorsements in mortgage actions, but also special indorsements.

An indorsement on a writ of summons in an action to recover possession of land is not a special indorsement. The fee for special indorsement in such a case is not taxable. Where a writ of summons is served within the jurisdiction by some party other than the sheriff, an affidavit of service cannot be allowed. Where the services made by the sheriff, an affidavit of service is part of his fees.

The writ of summons was indorsed with a statement that the plaintiffs resided at the township of Brant, in the county of Bruce, and in the State of Wisconsin, in the United States of America. Upon this an order was issued upon præcipe, under *Con. Rule 1242*, by an officer of the court requiring one of the plaintiffs to give security for costs and staying proceedings until security should be given. The plaintiffs, desiring to arrest the defendant, were refused an order because of the stay of proceedings, and then applied for and obtained an order allowing them to deposit \$400 with an officer of the court instead of giving a bond for security for costs, and also declaring it to be without prejudice to the right of the plaintiffs to set aside the order staying proceedings, and they paid the \$400 to the officer accordingly:—*Held*, that it appeared from the indorsement on the writ that the plaintiffs resided out of Ontario, and that the issue of an order for security under *Con. Rule 1242* was thereby warranted; but that the order issued, being against one plaintiff only, was irregular and might have been set aside; it was not void, however, and was good until set aside; and having been complied with, as it was by the deposit of the money with the officer, the compliance made it good, and it could not afterwards be set aside, notwithstanding the reservation in the order:—*Semble*, that if it had appeared by the indorsement, as it afterwards did by affidavit, that one of the plaintiffs in fact resided in Ontario, the order for security would have been void, and would have been set aside notwithstanding the compliance with it: *McConnell v. Wakeford*, 13 P.R. 455. See TAXATION and APPEALS, and cases cited thereunder.

PL

Inst

Let

Wri

Con

Ren

Wri

Spe

Cop

For

Noti

Atte

Paid

Whe

Or l

Atte

Paid

Let

Affid

Whe

t

t

If se

c

i

Affid

If se

s

s

t

Atten

Instr

Draw

If abc

ir

Atten

cc

Couns

of

Engro

Copy t

Copy t

PART II.

FORMS OF BILLS OF COSTS.

PRECEDENT NO. 1.

PLAINTIFF'S COSTS WHERE JUDGMENT OBTAINED IN DEFAULT OF DEFENCE TO A SPECIALLY ENDORSED WRIT.

	High Court.	County Court.
Instructions	\$4.00	\$3.00
Letter to defendants, each and postage.....	.50	\$.02 .25 \$.02
Writ of summons.....	2.00	1.00
Concurrent writ of summons.....	1.50	.75
Renewed writ of summons.....	1.50	.75
Writ of summons, for every additional folio over four folios.....	.20	.20
Special endorsement.....	1.00	.75
Copy of writ to file and serve, including all neces- sary notices, each.....	1.00	.75
For each folio over four folios (only four copies of writ to be allowed).....	.10	.10
Notice of writ where necessary.....	1.00	.75
Attending to issue writ.....	.50	.25
Paid, including filing.....	1.10	60
Where writ served by sheriff, charge attending sheriff with.....	.50	.25
Or letter to sheriff with writ and postage.....	.50	.25
Attending sheriff on return.....	.50	.25
Paid sheriff's fees.....	.50	.07 .25 .07
Letter to sheriff with his fees and postage.....	1.00	.75
Affidavit of mileage.....	1.00	.50
Where writ is not served by sheriff and service is taxable to solicitor, on sheriff's default, charge attending to serve writ.....	1.00	.50
If service effected over two miles from solicitor's office charge for every mile beyond two miles in addition.....	.13	.10
Affidavit of service of writ.....	1.00	.75
If service effected outside jurisdiction, all neces- sary letters and amount actually paid for service, if reasonable, will be allowed by the taxing officer.....	.50	.10 .25 .10
Attending to search appearance and paid.....	1.50	1.00
Instructions for statement of claim.....	2.00	1.00
Drawing statement of claim if ten folios or under..	.20	.15
If above ten folios, for every folio above ten folios in addition.....	1.00	.50
Attending counsel settling statement of claim (if counsel not solicitor or solicitor's partner).....	5.00	3.00
Counsel fee settling in the discretion of the taxing officer.....	.10	.10
Engrossing, per folio.....	.10	.10
Copy to file, per folio.....	.10	.10
Copy to serve, per folio.....	.10	.10

	High Court. County Court.			
Attending to file and paid.....	.50	.10	.25	.10
Attending to serve.....	.50		.25	
Fee after statement of claim.....	1.00		.50	
Attending to search defence and paid.....	.50	.10	.25	.10
Drawing affidavit of default in delivering defence..	1.00		.75	
Drawing judgment.....	1.00		.50	
Attending to enter judgment and paid.....	.50	1.60	.25	.30
Attending for judgment.....	.50		.25	
Paid computation.....		1.00		.50
Paid filing, each.....		.10		.10
Fee on judgment.....	1.00		.50	
Bill of costs engrossing and copy for taxing officer, for each folio.....	.30		.20	
Attending on taxation and paid, including filing....	1.00	1.00	1.00	.90
Paid filing, each.....		.10		.10
Attending for certificate (if necessary).....	.50		.25	
Attending to file certificate and paid.....	.50	.10	.25	.10

PRECEDENT NO. 2.

PLAINTIFF'S COSTS WHERE JUDGMENT OBTAINED IN DEFAULT
OF APPEARANCE TO A SPECIALLY ENDORSED WRIT.

	High Court. County Court.			
Instructions to sue.....	\$3.00		\$2.00	
Letter to defendant, each and postage.....	.50	\$.02	.25	\$.02
Writ of summons.....	2.00		1.00	
Concurrent writ of summons.....	1.50		.75	
Renewed writ of summons.....	1.50		.75	
For every additional folio over four folios in writ..	.20		.20	
Special endorsement.....	1.00		.75	
Copy of writ to file and serve, including all neces- sary notices, each.....	1.00		.75	
For each folio over four (only four copies of writ to be allowed).....	.10		.10	
Notice of writ (where necessary) and copy.....	1.00		.75	
Attending to issue writ.....	.50		.25	
Paid, including filing.....	1.10		.60	
Where writ served by sheriff, charge attending sheriff with writ.....	.50		.25	
Or letter to sheriff with writ and postage.....	.50		.25	
Attending sheriff on return.....	.20		.25	
Paid sheriff's fees.....				
Letter to sheriff with his fees and postage.....	.50	.07	.25	.07
Affidavit of mileage.....	1.00		.75	
Where writ is not served by sheriff and service is taxable to solicitor on the sheriff's default charge attending to serve writ.....	1.00		.50	
If service effected over two miles from solicitor's office, charge for every mile beyond two miles in addition.....	.13		.10	
Affidavit of service of writ.....	1.00		.75	
If service effected outside jurisdiction, all necessary letters and amounts actually paid for service, if reasonable, will be allowed by the taxing officer.....				
Attending to search appearance and paid.....	.50	.10	.25	.10
Affidavit of non-appearance.....	1.00		.75	

	High Court.	County Court.
Drawing judgment.....	1.00	.50
Attending to enter judgment.....	1.00	.50
Paid entering judgment.....	1.60	.30
Paid computation, if any.....	1.00	.50
Paid each filing.....	.10	.10
Fee on judgment.....	1.00	.50
Drawing bill of costs including engrossing and copy for taxing officer or County Court clerk, per folio.....	.30	.20
Attending on taxation (per hour in H.C. Cases)....	1.00	1.00
Paid taxation.....	.90	.80
Paid each filing.....	.10	.10
Attending for certificate (if necessary).....	.50	.25
Attending to file certificate and paid.....	.50	.25
Issuing execution.....		.10
Attending sheriff with endorsement, etc.....	6.00	4.00

PRECEDENT NO. 3.

PLAINTIFF'S BILL OF COSTS ON JUDGMENT UNDER ONTARIO
RULE 608.

	High Court.	County Court.
Instructions to sue.....	\$3.00	\$2.00
Letter to defendants each, and postage.....	.50 \$.02	.25 \$.02
Writ of summons.....	2.00	1.00
Concurrent writ of summons.....	1.50	.75
Renewed writ of summons.....	1.50	.75
For every additional folio over four folios, in writ..	.20	.20
Special endorsement.....	1.00	.75
Copies of writ to file and serve, including all necessary notices, each.....	1.00	.75
For each folio over four in copies (only four copies of writ to be allowed).....	.10	.10
Attending to issue writ and paid.....	.50 1.10	.25 .60
Instructions to move under Rule 608 (in the dis- cretion of the taxing officer).....	2.00	1.00
Drawing affidavit in support of motion and engross- ing, per folio.....	.30	.30
Preparing each exhibit.....	.10	.10
Attending to swear to affidavit and paid.....	.50 .20	.25 .20
Paid marking each exhibit.....	.10	.10
Copy of affidavit to serve with notice of motion, per folio.....	.10	.10
Attending Master on application for leave to serve notice of motion for judgment.....	1.00	.50
Drawing order granting leave, per folio.....	.20	.20
Attending to issue order.....	.50	.25
Paid.....	.50	.50
Paid each folio.....	.10	.10
Fee on order.....	1.00	.50
Copy of order to serve, per folio.....	.10	.10
Drawing notice of motion, including engrossing and copy to serve, per folio.....	.30	.15
Where served by sheriff, charge.....		
Attending sheriff with.....	.50	.25
Or letter to sheriff with, and postage.....	.50	.25
Attending sheriff on return.....	.50	.25

	High Court. County Court.			
Paid sheriff's fees.....				
Letter to sheriff with his fees and postage.....	.50	.07	.25	.07
Affidavit of mileage.....	1.00		.75	
Where papers not served by sheriff and service taxable to solicitor, on the sheriff's default, charge.....				
Attending to serve.....	1.00		.50	
If service effected over two miles from solicitor's office, charge for every mile beyond two miles in addition.....	.13		.10	
Affidavit of service and attending to swear and paid..		1.00		.75
Where a solicitor accepts service, charge.....				
Attending to serve writ and obtain undertaking to appear.....	1.00		.50	
Attending to set down motion and paid.....	.50	.50	.25	.20
Paid on filing each.....		.10		.10
Instructions for brief to be used on motion.....	2.00		.50	
Drawing brief.....	2.00		1.00	
If over five folios, for each folio in addition.....	.10		.10	
Where counsel not the solicitor or solicitor's partner, charge.....				
Attending counsel with brief and for brief.....	1.00		.50	
Having received notice of filing affidavit in reply, demand for copy of affidavits, copy and service..	1.00		.50	
Having received affidavits, fee perusing.....	1.00		.50	
If over twenty folios, for each folio in addition 5c., not to exceed.....	5.00			
Instructions for affidavit in reply, in the discretion of the taxing officer.....	1.00		.50	
Drawing and engrossing affidavit per folio.....	.30		.30	
Attending to swear and paid.....	.50	.20	.25	.20
Preparing each exhibit.....	.10		.10	
Paid marking each exhibit.....		.10		.10
Having received demand for copy of affidavit, copy of affidavit to serve, per folio.....	.10		.10	
Attending to serve.....	.50		.25	
Counsel fee on return of motion.....	10.00		5.00	
In High Court cases to be increased in the discretion of the taxing officer in Toronto, but no more than two counsel fees should be allowed in any case. In County Court cases to be increased in the discretion of the judge to.....			10.00	
Fee after argument.....	1.00		.50	
If judgment reserved, charge attending to hear judgment.....	2.00		1.00	
Drawing minutes of judgment, each folio.....	.20		.20	
Attending for appointment to settle judgment copy and service.....	1.50		.75	
Copy of minutes of judgment to serve per folio....	.10		.10	
Attending on settlement per hour.....	1.00		.50	
In important cases, to be increased in the discretion of the taxing officer to.....	5.00		2.50	
Attending to enter judgment.....	.50		.25	
Paid entering judgment.....		1.60		.50
Paid filing, each.....		.10		.10
Attending for judgment.....	.50		.25	
Copy of judgment for taxing officer each folio.....	.10		.10	
Fee on judgment.....	1.00		.50	
Bill of costs, engrossing and copy for taxing officer..	.30		.20	

FORMS OF BILLS OF COSTS.

289

	High Court. County Court.	
Attending on taxation.....	1.00	1.00
Paid taxation, including filing.....	1.00	.90
Paid each, filing.....	.10	.10
Attending for certificate (if necessary).....	.50	.25
Attending to file, certificate and paid.....	.50 .10	.25 .10

PRECEDENT NO. 4.

PLAINTIFF'S BILL OF COSTS ON JUDGMENT UNDER ONTARIO
RULE 603.

	High Court. County Court.	
Instructions.....	\$4.00	\$3.00
Letter to defendants each, and postage.....	.50 \$.02	.25 \$.02
Writ of summons.....	2.00	1.00
Concurrent writ of summons.....	1.50	.75
Renewed writ of summons.....	1.50	.75
Writ of summons for every additional folio over four folios.....	.20	.20
Special endorsement.....	1.00	.75
Copy of writ to file and serve including all neces- sary notices, each.....	1.00	.75
For each folio over four (only four copies of writ to be allowed).....	.10	.10
Notice of writ where necessary and copy.....	1.00	.75
Attending to issue writ.....	.50	.25
Paid including filing.....	1.10	.60
Where writ served by sheriff, charge.....		
Attending sheriff with.....	.50	.25
Or letter to sheriff with writ and postage.....	.50	.25
Attending sheriff on return.....	.50	.25
Paid sheriff's fees.....		
Letter to sheriff, with his fees and postage.....	.50 .07	.25 .07
Affidavit of mileage.....	1.00	.75
Where writ is not served by sheriff and service is taxable to solicitor on sheriff's default, charge		
Attending to serve writ.....	1.00	
If service effected over two miles from solicitor's office charge for every mile beyond two miles in addition.....	.13	.10
Affidavit of service of writ.....	1.00	.75
If service effected outside of jurisdiction all neces- sary letters and amount actually paid for ser- vice, if reasonable, will be allowed by the taxing officer.....		
Attending to search appearance and paid.....	.50 .10	.25 .10
Instructions to move for judgment in discretion of the taxing officer.....	2.00	1.00
Drawing and engrossing affidavit in support of application.....	.30	.30
Preparing each exhibit.....	.10	.10
Attending to swear to affidavit and paid.....	.50 .20	.25 .20
Paid marking exhibits, each.....	.10	.10
Copy of affidavit to serve, per folio.....	.10	.10
Attending to file affidavit and paid.....	.50 .10	.25 .10
Drawing notice of motion for judgment, engrossing and copy per folio.....	.30	.15
Attending to serve notice of motion, etc.....	.50	.25

COSTS—19

High Court. County Court.

Having received notice of filing affidavit in answer; demand for affidavit copy and service	1.00		.50	
Fee perusing affidavits (if affidavit over twenty folios, five cents a folio in addition, not to exceed \$5.00)	1.00		.50	
Each necessary enlargement	1.00		.50	
Instructions for affidavit in reply in the discretion of the taxing officer	1.00		.50	
Drawing and engrossing affidavit per folio	.30		.30	
Attending to swear and paid	.50	.20	.25	.20
Preparing exhibits, each	.10		.10	
Paid marking exhibits	.10	.10	.10	.10
Attending to file affidavit and paid	.50	.10	.25	.10
Counsel fee on motion	2.00		1.00	
To be increased in the discretion of the taxing officer, in cases in the High Court, to a sum not ex- ceeding	5.00			
To be increased in the discretion of the judge in County Court cases, to a sum not exceeding			5.00	
Subject to further increase in the discretion of a taxing officer at Toronto				
If judgment is reserved, charge attending to hear judgment	1.00		.50	
Drawing judgment per folio	.20		.20	
Attending to enter judgment and paid	1.00	1.60	.50	.50
Paid filings each		.10		.10
Fee on judgment	1.00		.50	
Bill of costs, engrossing including copy for taxing officer per folio	.30		.20	
Taxation (in High Court cases per hour)	1.00		1.00	
Paid taxation, including filing		1.00		.90
Paid additional filings each		.10		.10
Attending for certificate if necessary	.50		.25	
Attending to file certificate and paid	.50	.10	.25	.10

PRECEDENT NO. 5.

PLAINTIFF'S BILL OF COSTS ON INTERLOCUTORY JUDGMENT
WHERE DAMAGES ASSESSED.

High Court. County Court.

Instructions	\$3.00		\$2.00	
Letters to defendants each and postage	.50	\$.02	.25	\$.02
Writ of summons	2.00		1.00	
Concurrent writ of summons	1.50		.75	
Renewed writ of summons	1.50		.75	
Writ of summons for every additional folio over four folios	.20		.20	
Special endorsement	1.00		.75	
Copy of writ to file and serve, including all neces- sary notices, each	1.00		.75	
For each folio over four	.10		.10	
(Only four copies of writ to be allowed), notice of writ where necessary	1.00		.75	
Attending to issue writ	.50		.25	
Paid including filing		1.10		.60
Where writ served by sheriff, charge attending sheriff with	.50		.25	

rt.

High Court. County Court.

	Or letter to sheriff with writ and postage.....	.50		.25	
	Attending sheriff on return.....	.50		.25	
	Paid sheriff's fees.....				
	Letter to sheriff with his fees; and postage.....	.50	.07	.25	.07
	Affidavit of mileage.....	1.00		.75	
	Where writ is not served by sheriff, and service is taxable to solicitor on sheriff's default, charge attending to serve writ.....	1.00		.50	
20	If service effected over two miles from solicitor's office charge for every mile beyond two miles in addition.....	.13		.10	
10	Affidavit of service of writ.....	1.00		.75	
10	If service effected outside of jurisdiction all necessary letters and amount actually paid for service, if reasonable, will be allowed by the taxing officer.....				
	Attending to search appearance and paid.....	.50	.10	.25	.10
	Affidavit of non-appearance.....	1.00		.75	
	Drawing judgment, each folio.....	.20		.20	
	Attending to enter judgment and paid besides filing.....	.50	1.60	.25	.30
	Paid filings each.....		.10		.10
	Attending for judgment.....	.50		.25	
50	Fee on judgment.....	1.00		.50	
10	Notice of assessment, copy and service.....	1.00		.50	
	Each additional copy.....	.10		.10	
	Jury notice copy and service.....	1.00		.50	
	Each additional copy.....	.10		.10	
	Drawing record, fifteen folios or under.....	1.50		.75	
90	Every folio in addition.....	.10		.10	
10	Attending to pass record.....	.50		.25	
	Paid.....		1.00		.50
10	Fee on record.....	1.00		.50	
	Attending to enter case and paid.....	.50	3.00	.25	.50
	Paid additional in jury cases.....		3.00		1.50
	Paid Stenographer.....		1.00		
7T	Instructions for brief.....	2.00		.50	
	Drawing brief, five folios or under.....	2.00		1.00	
	Each additional folio.....	.10		.10	
	Original and necessary matter in brief.....	.20		.20	
rt.	If counsel not solicitor or solicitor's partner, charge attending counsel with brief, and for brief.....	1.00		.50	
02	Counsel fee advising on evidence.....	5.00		3.00	
	Subpoena, <i>duces tecum</i>	1.25		.75	
	Subpoena <i>ad test</i>	1.00		.50	
	Attending to issue and paid each.....	.50	1.00	.25	.20
	Copy to serve, each (only four copies allowed).....	1.00		.75	
	If subpoena is served by sheriff, charge attending sheriff with, or letter to sheriff with subpoena, copies and witness fees and postage.....	.50		.25	
	Attending on return.....	.50		.25	
	Letter to sheriff with his fees.....	.50	.07	.25	.07
	Paid sheriff fees for service.....				
	Affidavit of mileage.....	1.00		.75	
60	If subpoena is not served by sheriff and service is taxable to solicitor on sheriff's default, charge.....				
	Attending to serve, each.....	1.00		.50	

	High Court. County Court.	
If service effected over two miles from solicitor's office charge for every mile beyond two miles in addition.....	.13	.10
Affidavit of service.....	1.00	.75
Counsel fee, with brief on assessment of damages, to be increased in County Court Cases, to not more than.....		10.00
In High Court cases, in the discretion of the taxing officer.....		
Fee after trial.....	1.00	.50
Paid crier calling case.....	.60	.50
Paid crier swearing each witness.....	.15	.15
Paid sheriff.....	1.00	.80
Paid County Court clerk, jury case.....		1.50
Non-jury case.....		.50
Drawing judgment, each folio.....	.20	.20
Attending to enter judgment and paid beside filings.....	.50 1.60	.25 .50
Attending for judgment.....	.50	.25
Fee on judgment.....	1.00	.50
Instructions for affidavit of disbursements (no instructions allowed unless affidavit special)....	1.00	.50
Drawing and engrossing affidavit, per folio.....	.30	.30
Attending to swear to affidavit and paid.....	.50 .20	.25 .20
Preparing each exhibit.....	.10	.10
Paid marking each exhibit.....	.10	.10
Copy of affidavit to serve, per folio.....	.10	.10
Paid witness fees, as per affidavit of disbursements		
Drawing bill of costs, engrossing and copy for taxing officer, per folio.....	.30	.20
Attending for appointment to tax.....	.50	.25
Copy of bill of costs to serve, per folio.....	.10	.10
Appointment and copy.....	.50	.25
Attending to serve.....	.50	.25
Attending on taxation, if High Court, per hour.....	1.00	1.00
Paid taxation.....	.90	.80
Paid on each filing.....	.10	.10
Attending for certificate (if necessary).....	.50	.25
Attending to file certificate, and paid.....	.50 .10	.25 .10

PRECEDENT NO. 6.

BILL OF COSTS OF SALE BY VIRTUE OF POWER OF SALE UNDER MORTGAGE.

	High Court. County Court.	
Instructions to sell.....	\$3.00	
Letter to mortgagor and postage.....	.50	\$.02
Letter to subsequent incumbrancers and postage....	.50	.02
Letter to owner of equity of redemption and postage.....	.50	.02
Attending registrar, or letter to registrar with abstract to be continued.....	.50	.02
Attending sheriff or letter to sheriff for certificate and postage.....	.50	.02
Attending treasurer or letter to treasurer for certificate and postage.....	.50	.02
Attending registrar or letter to registrar with fees and postage.....	.50	.02

	High Court.	County Court.
Paid registrar's fees for continued abstract.....		
Attending sheriff or letter to sheriff with fees and postage.....	.50	.02
Paid sheriff's fees for certificate.....		
Attending treasurer or letter to treasurer with fees and postage.....	.50	.02
Paid treasurer for certificate.....		
Drawing notice of sale, per folio.....	.20	
Fee revising.....	2.00	
Engrossing, per folio.....	.10	
Copy for service, per folio.....	.10	
Attending to serve each notice.....	.50	
Paid service, if served by sheriff or bailiff.....		
Declaration of service, each declaration.....	1.00	
Copy of notice of sale to post up if necessary per folio.....	.10	
Attending to post upon premises.....	.50	
Declaration of posting up.....	1.00	
Attending auctioneer, arranging as to sale.....	1.00	
Drawing advertising of sale, five folios or under.....	2.00	
Each folio over five.....	.20	
Copy of advertisement for printer, per folio.....	.10	
Attending printer for.....	.50	
Attending for proof.....	.50	
Revising proof, per folio.....	.10	
Attending printer with proof revised.....	.50	
Paid printer.....		
Attending poster with bills.....	.50	
Paid bill poster.....		
Making copy of advertisement for newspaper, per folio.....	.10	
Attending newspaper with, for insertion.....	.50	
Paid insertion.....		
If advertisement is inserted in more than one newspaper repeat the above charges.....		
Notice of auction to all parties interested and registered post.....	.50	.08
Declaration of mailing, per folio.....	.20	
Engrossing, per folio.....	.10	
Preparing each exhibit.....	.10	
Attending to make declaration and paid.....	.50	.20
Paid marking each exhibit.....		.10
Drawing conditions of sale, per folio.....	.20	
Fee revising.....	2.00	
Engrossing, per folio.....	.10	
Copy, per folio.....	.10	
Fee settling reserved bid.....	1.00	
Fee attending sale if sale takes place where solicitor resides.....	5.00	
If sale occupies more than three hours, for every hour in addition.....	1.00	
Attending sale elsewhere, besides travelling and hotel expenses.....	10.00	
If sale occupies more than one day, in addition to travelling and hotel expenses.....	20.00	
Paid auctioneer's fees, one per cent., up to two thousand dollars and one-fourth of one per cent. on balance, declaration of auctioneer as to result of sale, per folio.....	.20	

	High Court.	County Court.
Engrossing, per folio.....	.10	
Preparing exhibits, each.....	.10	
Attending to swear and paid.....	.50	.20
Paid marking exhibits.....		.10
Drawing declaration of bill poster, per folio.....	.20	
Engrossing, per folio.....	.10	
Preparing exhibits, each.....	.10	
Attending to swear and paid.....	.50	.20
Paid marking each exhibit.....		.10
Attending to search files of newspapers in which advertisement published, each attendance.....	.50	
Drawing each declaration of publication of adver- tisement, per folio.....	.20	
Engrossing, per folio.....	.10	
Preparing exhibits, each.....	.10	
Attending to swear and paid.....	.50	.20
Paid marking each exhibit.....		.10
Having received requisitions from purchaser draw- ing answers to requisitions, per folio.....	.20	
Fee settling answers to requisition.....	2.00	
Engrossing answers to requisition, per folio.....	.10	
Copy to serve, each, per folio.....	.10	
Attending to serve.....	.50	
Attending purchaser's solicitor verifying abstract and going over requisitions and answers, per hour.....	1.00	
Drawing conveyances under power of sale, per folio	.20	
Fee settling.....	2.00	
Attending purchaser's solicitor with draft convey- ance.....	.50	
Engrossing conveyance under power of sale, per folio.....	.10	
Attending execution, each attendance.....	1.00	
Affidavit of execution, each affidavit.....	1.00	
Fee on settlement.....	2.00	
Attending registry office, registering conveyance...	.50	
Paid registrar's fees.....		

PRECEDENT NO. 7.

COSTS OF A SOLICITOR OPPOSING AN APPLICATION TO TAX HIS
BILL OF COSTS UNDER THE ONTARIO SOLICITORS' ACT.

	High Court.	County Court.
Having been served with notice of motion for order. Instructions to oppose (not exceeding). \$2.00	\$1.00	
Demand for copy of affidavits to be used on motion and copy.....	.50	.25
Attending to serve.....	.50	.25
Having received affidavits' fee perusing (up to twenty folios).....	1.00	.50
Every folio over twenty in addition.....	.05	
Fee for perusing in no case to exceed.....	5.00	
Instructions for affidavits in answer (in discretion of taxing officer).....	1.00	1.00
Drawing affidavit, per folio.....	.20	.20
Engrossing, per folio.....	.10	.10
Preparing exhibits, each.....	.10	.10

FORMS OF BILLS OF COSTS.

295

High Court. County Court.

Attending to swear and paid.....	.50	\$.20	.25	\$.20
Paid marking each exhibit.....		.10		.10
Having received demand for copies, copy to serve per folio.....	.10			.10
Attending to file affidavits and paid.....	.50	.10	.25	.10
Each enlargement of motion.....	1.00		.50	
If affidavits in reply served, charge fee perusing (up to twenty folios).....	1.00		.50	
Over twenty folios, per folio.....			.05	
In no case to exceed.....	5.00			
Where it is necessary to examine on affidavits filed, charge for examination as in Precedents 8 and 9.....				
Counsel fee on motion.....	2.00		1.00	
To be increased in the discretion of the taxing officer in cases in H.C.J.....			5.00	
In the discretion of the judge in C.C. cases to.....			5.00	
Subject to further increase by the taxing officer in Toronto, the Master in Chambers may in cases tried before him recommend a fee.....				
Attending to hear judgment if judgment reserved..	1.00		.50	
Drawing order, per folio.....	.20		.20	
Minutes to serve, per folio.....	.10		.10	
Notice of settling copy and service.....	1.00		.50	
Attending settling order, per hour.....	1.00		.50	
To be increased in discretion of taxing officer in important cases to	2.00		5.00	
To attending to have order signed	.50		.25	
Attending for order.....	.50		.25	
Paid entry, per folio.....		.10		.10
Fee on order.....	1.00		.50	
Copy of order to serve, per folio.....	.10		.10	
Attending to serve.....	.50		.25	
Attending on reference, per hour.....	1.00			
Bill of costs and copy, per folio.....	.30		.20	
Copy to serve.....	.10		.10	
Instructions for affidavit of disbursements (if special)	1.00		.50	
Drawing affidavit of disbursements and engrossing, per folio.....	.30		.30	
Attending to swear and paid.....	.50	.20	.25	.20
Copy for service, per folio.....	.10		.10	
Attending for appointment.....	.50		.25	
Attending to serve bill of costs, affidavit of dis- bursements, and appointment.....	.50		.25	
Attending on taxation (per hour in H.C. cases).....	1.00		1.00	
Paid taxation.....		.90		.80
Paid on reference, per hour.....	1.00		1.00	
Paid filings, each.....		.10		.10
Attending for report.....	.50		.25	
Attending to file report.....	.50		.25	
Paid filing report.....		.10		.10

PRECEDENT NO. 8.

BILL OF COSTS OF PARTY EXAMINED FOR DISCOVERY.

	High Court.	County Court.
Instructions for examination.....	\$2.00	\$1.00
Having received appointment for examination, attending to give undertaking to produce.....	1.00	.50
Letter to party to be examined informing him of examination and postage.....	.50 \$.02	.25 \$.02
Attending on examination, per hour.....	1.00	.50
To be increased in the discretion of the taxing officer in Toronto (or in County Court cases by County Court Judge) to not exceeding, per hour.....	2.00	1.00
Under tariff item 107 a counsel fee may be allowed by the taxing officer in Toronto (or the judge in County Court cases) in lieu of fees for attendance, such counsel fee in County Court cases not to exceed.....		5.00
Paid special examiner.....		
Appointment.....	.50	.10
Marking exhibits, each.....	.20	.20
Oath.....	.20	.20
Taking depositions, each hour engaged.....	1.50	.75
Copy of depositions, per folio.....	.10	.10
Certificate.....	.50	.25
Where the examiner is not a special examiner, his fees are as follows:		
Oath.....	.20	.20
Taking depositions, per hour.....	1.00	.75
Each additional hour.....	1.00	.50
Copy of depositions, per folio.....	.10	.10
Certificate.....	.50	.50
Attending to bespeak and for copy of depositions..	1.00	.50
Paid for copy depositions, per folio.....	.10	.10

PRECEDENT NO. 9.

BILL OF COSTS OF PARTY EXAMINING FOR DISCOVERY.

	High Court.	County Court.
Instructions.....	\$2.00	\$1.00
Attending for appointment.....	.50	.25
Copy of appointment, each.....	.10	.10
Subpœna <i>ad testificandum</i>	1.00	.50
If over four folios, each additional folio.....	.15	.15
Subpœna <i>duces tecum</i>	1.25	.75
If over four folios, each additional folio.....	.15	.15
Attending to issue subpœna and paid.....	.50 \$1.00	.25 \$.20
Each copy subpœna.....	1.00	.75
If over four folios, each additional folio.....	.10	.10
Attending to serve solicitor with appointment.....	.50	.25
Attending to serve examined party with appoint- ment and subpœna.....	.50	.25
Paid conduct money.....		
Affidavit of service.....	1.00	.75
Where solicitor gives undertaking to produce, no charges can be made for subpœna. Charge.....		

High Court. County Court.

Drawing, undertaking and attending solicitor with..	1.00	.50
Paid conduct money.....		
Where subpoena and appointment is served by the sheriff, the following charges are taxable.....		
Attending sheriff with subpoena.....	.50	.25
Paid conduct money to sheriff		
Attending on return.....	.50	.25
Paid sheriff's fees.....		
Affidavit of mileage.....	1.00	.50
Attending on examination per hour	1.00	.50
To be increased in the discretion of the taxing officer in Toronto (or in County Court cases by County Court Judge) to not exceeding per hour..	2.00	1.00
Under tariff item 107, a counsel fee may be allowed by the taxing officer in Toronto (or the judge in County Court cases) in lieu of fees for attendance (such counsel fee in County Court cases not to exceed.....		5.00
Attending to bespeak and for copy of depositions..	.50	.25
Paid special examiner		
Appointment	.50	.10
Marking exhibits, each.....	.20	.20
Oath	.20	.20
Taking depositions, each hour engaged.....	1.50	.75
Copy of depositions per folio		.10
Certificate	.50	.25
Where the examiner is not a special examiner, his fees are as follows:		
Oath	.20	.20
Taking depositions per hour	1.00	.75
Each additional hour.....	1.00	.50
Copy of depositions per folio	.10	.10
Certificate	.50	.50

PRECEDENT NO. 10.

COSTS OF AN ISSUE. (PLAINTIFF'S.)

High Court. County Court.

Instructions	\$2.00	\$1.00
Drawing issue for trial of facts, by agreement or order per folio	.20	.20
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.....		
Fee settling issue in the discretion of the taxing officer (or County Court clerk in County Court cases) not exceeding.....	5.00	3.00
Engrossing issue per folio.....	.10	.10
Copy to serve per folio.....	.10	.10
Copy to file per folio	.10	.10
Attending to serve	.50	.25
Attending to file	.50	.25
Paid filing.....	\$.10	\$.10
Make the same charges in the remainder of bill as in an ordinary action after pleadings closed, see precedent No. 11.....		

PRECEDENT NO. 11.

PLAINTIFF'S COSTS OF AN ORDINARY ACTION.

	High Court.		County Court.	
Instructions.....	\$4.00		\$3.00	
Letter to each defendant.....	.50	\$.02	.25	\$.02
Where notice of action is necessary by statute or otherwise, charge.....				
Drawing notice of action, and engrossing, per folio.....	.30		.30	
Copy for service, per folio.....	.10		.10	
Attending to serve.....	.50		.25	
Writ of summons.....	2.00		1.00	
Concurrent writ.....	1.50		.75	
Renewed writ.....	1.50		.75	
If over four folios, for each additional folio.....	.20		.20	
Special endorsement.....	1.00		.75	
Attending for writ.....	.50		.25	
Paid including filing.....		1.10		.60
Copies of writ to file and serve (not exceeding four altogether).....	1.00		.75	
For each folio over four folios.....	.10		.10	
Where writ served by sheriff, charge.....				
Attending sheriff with writ.....	.50		.25	
Attending sheriff on return.....	.50		.25	
Paid sheriff's fees.....				
Affidavit of mileage.....	1.00		.75	
Service of each copy of writ where not served by sheriff, or by sheriff's officer, when allowed to solicitor, on sheriff's default, each.....	1.00		.50	
If service over two miles from solicitor's office, for each mile in addition.....	.13		.10	
Affidavit of service.....	1.00		.75	
Where writ is served out of the jurisdiction, the taxing officer shall make such allowance as he shall think fit.....				
Where service is accepted by solicitor, charge.....				
Attending with writ and to obtain undertaking to appear.....	1.00		.50	
If it is necessary to file <i>lis pendens</i> , charge.....				
Attending to bespeak and for certificate.....	1.00		.50	
Paid for certificate and filing.....		1.10		.30
Attending registry office with certificate for registration.....	.50		.50	
Paid registration.....		.50		.50
Attending to search appearance and paid.....	.50	.10	.25	.10
If no appearance entered, and interlocutory judgment signed, charge.....				
Affidavit of non-appearance.....	1.00		.75	
Drawing judgment.....	1.00		.50	
Attending to enter judgment.....	.50		.25	
Fee on judgment.....	1.00			
Paid entering judgment.....		1.60		.30
Instructions for pleadings.....	1.50		1.00	
Drawing same, if above ten folios, for every folio above ten, in addition.....	.20		.15	
Attending counsel with and for, to settle when solicitor not counsel, nor counsel's partner.....	1.00		.50	
Counsel fee settling in the discretion of the taxing officer.....	5.00		3.00	

Eng
Cop
Attu
Cop
Attu
If s
Affi
Fee
If s
To i

Atte
Atte
Atte
Paid
If p

Draw
If al
Engr
Copy
Atte
Copy
Atte
Havi

I
Atte
i
Fee
Copy
Atten
Havi
o
Dema
Havin
fe
oi
ol
Letter
Drawi
Engro
Atten
Atten
Notice
Havin
to
Atten
"
Notice
Atten
To be
off
Havin
int
Notice
Atten
Atten
wit

High Court. County Court.

Engrossing statement of claim.....	.10		.10
Copy to file per folio.....	.10		.10
Attending to file and paid.....	.50	.10	.25
Copy to serve per folio.....	.10		.10
Attending to serve.....	.50		.25
If admission of service refused, charge.....			
Affidavit of service.....	1.00		.75
Fee after statement of claim.....	1.00		.50
If statement of claim printed, charge.....			
To allowance for printing in lieu of all copies, per folio.....	.30		.30
Attending printer with.....	.50		.25
Attending revising proof, per folio.....	.10		.10
Attending printer for copies, per folio.....	.50		.25
Paid printer.....			
If particulars demanded by defendant's solicitors, charge.....			
Drawing particulars up to five folios.....	2.00		.75
If above five folios, each folio in addition.....	.20		.15
Engrossing particulars, per folio.....	.10		.10
Copy of particulars, to file, per folio.....	.10		.10
Attending to file and paid.....	.50	.10	.25
Copy to serve, per folio.....	.10		.10
Attending to serve.....	.50		.25
Having been served with statement of defence, fee perusing.....	1.00		.50
Attending for order to produce and paid, including filing.....	.50	.60	.25
Fee on order.....	1.00		.50
Copy of order to serve, per folio.....	.20		.20
Attending to serve.....	.50		.25
Having been served with notice of filing affidavit on production.....			
Demand for copy and attending to serve.....	1.00		.50
Having been served with order to produce by defendant's solicitors; instructions for affidavit on production (in discretion of the taxing officer).....	2.00	1.00	
Letter to client to come in.....	.50	.02	.25
Drawing affidavit, per folio.....	.20		.20
Engrossing, per folio.....	.10		.10
Attending to swear and paid.....	.50	.20	.25
Attending to file affidavit and paid.....	.50	.10	.25
Notice of filing copy and service.....	1.00		.50
Having received demand for copy, copy of affidavit to serve, per folio.....	.10		.10
Attending to serve and have demand marked "satisfied".....	.50		.25
Notice to inspect copy and service.....	1.00		.50
Attending on inspection of production.....	1.00		.50
To be increased in the discretion of the taxing officer to.....	2.00	1.00	
Having been served with notice of defendant's intention to inspect plaintiff's production.....			
Notice appointing time and place for inspection.....	.50		.25
Attending to serve.....	.50		.25
Attending on inspection of plaintiff's production with defendant's solicitor.....	1.00		.50

	High Court.	County Court.	
To be increased in the discretion of the taxing officer to.....	2.00	1.00	Sul
If plaintiff examined for discovery, charge, as in Precedent No. 8.....			Pai
If defendant examined for discovery, and costs of examination allowed, charge, as in Precedent No. 9.....			If c
Instructions for reply, if to counter-claim, which could not prior to the Ontario Judicature Act, 1881, have formed the subject of a set-off.....	2.00	1.00	Cop
Drawing reply or joinder of issue if necessary.....	2.00	1.00	For
For every folio above five, in addition.....	.20	.15	Att
Attending counsel with and for to settle, where counsel not the solicitor or solicitor's partner..	1.00	.50	Att
Counsel fee settling in the discretion of the taxing officer.....	5.00	3.00	Pai
Engrossing reply, per folio.....	.10	.10	Pai
Copy to file.....	.10	.10	Aff
Attending to file.....	.50	.25	If s
Copy to serve, per folio.....	.10	.10	
Attending to serve.....	.50	.25	
Fee after reply.....	1.00	.50	Eac
Certified copy of pleadings for use of judge.....	1.50	.75	Whi
For every folio over fifteen, in addition.....	.10	.10	
Attending to have certified.....	.50	.25	
Paid.....	1.00	.50	Aff
Fee on record.....	1.00	.50	Cou
Notice of trial, copy and service.....	1.00	.50	In F
Each additional copy.....	.10	.10	
Each additional service.....	.50	.25	
Letter to plaintiff advising of trial.....	.50	.02	Prov
Jury notice, copy and service.....	1.00	.50	
Each additional copy.....	.10	.10	
Each additional service.....	.50	.25	In Co
Attending to file jury notice and paid.....	.50	.25	
Instructions for brief.....	2.00	.50	
Drawing same, not exceeding five folios.....	2.00	1.00	
For each folio over five folios.....	.10	.10	
Original and necessary matter, per folio.....	.20	.20	
Copy of brief for second counsel when counsel fee taxed to him, per folio.....	.10		In Co
Attending counsel with and for brief.....	1.00	.50	
Counsel fee advising on evidence in the discretion of the taxing officer, not exceeding.....	5.00	3.00	
Notice to produce and copy, not exceeding two folios..	.50	.25	In Co
Each additional folio above two folios.....	.20	.20	
Attending to serve, each attendance.....	.50	.25	
Notice to admit and copy not exceeding two folios..	.50	.25	Wher
Each folio above two folios.....	.20	.20	
Attending to serve.....	.50	.25	Each l
Attending to enter action for trial and paid in non-jury cases.....	.50	3.00	es
Paid additional in jury cases.....		3.00	Not to
Paid stenographer.....		1.00	Provid
Subpœna <i>ad testificandum</i>	1.00	.50	le:
Paid for same.....		1.00	en
For each folio over four in addition.....	.15	.15	tri
Copy of subpœna to serve each (not exceeding four altogether).....	1.00	.75	Cr
For each folio over four in addition, per folio.....	.10	.10	or
			tit

	High Court. County Court.		
y Court.			
	Subpœna duces tecum.....	1.25	.75
	Paid.....	1.00	.20
	If over four folios, additional per folio.....	.15	.15
	Copy of subpœna to serve not exceeding four folios.....	1.00	.75
	For each folio over four in addition, per folio.....	.10	.10
	Attending sheriff with subpœnas to serve.....	.50	.25
	Attending on return.....	.50	.25
	Paid conduct money.....		
	Paid sheriff's fees.....		
	Affidavit of mileage.....	1.00	.75
	If subpœnas are not served by the sheriff, and service taxable to solicitor on sheriff's default, charge.....		
	Each service.....	1.00	.50
	Where service is effected more than two miles from solicitor's office, each mile in addition.....	.13	.10
	Affidavit of service.....	1.00	.75
	Counsel fee at trial.....	10.00	10.00
.10	In High Court cases to be increased by the taxing officer in his discretion to a sum not exceeding \$40.00 to a senior counsel, and \$20.00 to a 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.....		
.02	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.....		
.10	In County Court cases, to be increased by the judge in actions of a special and important nature, falling within the increased jurisdiction conferred by 59 Vict., ch. 19 upon County Courts (on notice to the opposite party to a sum not exceeding.....		50.00
	In County Court cases to be increased by the judge, in actions of a special or important nature, not falling within the increased jurisdiction aforesaid, on notice to the opposite party to a sum not exceeding.....		25.00
	In County Court cases no charge to be made by either party in connection with such application. (See tariff item 160 and 166).....		
	Where solicitor attends the trial when not himself counsel or counsel's partner.....	2.00	1.00
.50	Each hour necessarily present, at trial in important cases.....	2.00	1.00
1.50	Not to exceed per day.....	10.00	5.00
.20	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 the Assize, County Court clerk, or other officer of the court, present at the time or proved by affidavit.....		

	High Court.	County Court.	
Fee after trial	1.00	.50	
Paid sheriff		1.00	.80
Paid erier calling case		.60	.50
Paid erier swearing each witness		.15	.15
Paid County Court clerk in County Court cases			.50
Paid County Court clerk additional			1.00
Where judgment reserved, charge			
Attending to hear judgment	2.00	1.00	
Drawing judgment per folio	.20	.20	
Where judgment settled on appointment, charge			
Copy of minutes, per folio	.10	.10	
Attending for appointment to settle judgment, copy and service	1.50	.75	
Additional copies and service, each	.60	.35	
Attending on settlement of judgment per hour	1.00	.50	
To be increased in the discretion of the taxing officer, to a sum not to exceed	5.00	2.50	
Attending to enter judgment and paid	.50	1.60	.50
Paid on each filing		.10	.10
Attending for judgment	.50	.25	
Fee on judgment	1.00	.50	
Instructions for affidavit of disbursements, (if special)	1.00	.50	
Drawing and engrossing affidavit per folio	.30	.30	
Attending to swear and paid	.50	.20	.25
Copy to serve	.10	.10	
Copy of judgment for taxing officer, per folio	.10	.10	
Drawing bill of costs, engrossing, and copy for taxing officer, per folio	.30	.20	
Copy of bill of costs to serve, per folio	.10	.10	
Attending for appointment to tax and paid	.50	.25	.10
Appointment and copy	.50	.25	
Attending to serve	.50	.25	
Each additional copy of appointment	.10	.10	
Each additional service	.50	.25	
Attending on taxation in High Court cases, per hour	1.00	1.00	
Paid taxation, including filing bill of costs		1.00	.90
Paid each filing		.10	.10
Attending for certificate of taxation when necessary ..	.50	.25	
Attending to file certificate and paid	.50	.10	.25

PRECEDENT NO. 12.

PLAINTIFF'S COSTS OF THE DAY.

	High Court.	County Court.	
Notice of trial and copy	\$.50	\$.25	
Additional copies, each	.10	.10	
Attending to serve, each	.50	.25	
Letter to client advising of trial and postage	.50 \$.02	.25 \$.02	
Attending to enter action for trial	.50	.25	
Paid entering	3.00	.50	
If jury case in addition	3.00	1.50	
Subpœna <i>ad test</i>	1.00	.50	
Each additional folio above four	.15	.15	
Attending to issue and paid	.50 1.00	.25	.20
Subpœna <i>duces tecum</i>	1.25	.75	

FORMS OF BILLS OF COSTS.

303

Court.

High Court. County Court.

	Each additional folio above four	.15		.15
.80	Attending to issue and paid	.50	1.00	.25
.50	Copies of subpoena (only four copies taxable)	1.00		.75
.15	Each additional folio above four	.10		.10
.50	Where served by sheriff, charge			
1.00	Attending sheriff with	.50		.25
	Paid sheriff conduct money			.25
	Attending on return	.50		.75
	Affidavit of mileage	1.00		
	Where outside counsel employed, charge			
	Attending counsel with and for brief	1.00		.50
	Counsel fee with brief at trial	10.00		5.00
	To be increased according to provisions of item 153, Tariff A.			
	Where solicitor attends the trial and is not counsel or partner of counsel, see item 93, Tariff A.			
	Fee after trial	1.00		.50
.50	Paid sheriff		1.00	.80
.10	Paid crier calling case		.60	.50
	Paid crier each witness		.15	.15
	Where jury sworn in County Court cases, charge			
	Paid County Court clerk			1.00
	Judge having postponed trial and ordered defend- ant to pay the costs of the day			
.20	Drawing order, per folio	.20		.20
	Fee on order	1.00		.50
	Attending for order	.50		.25
	Paid for order		.50	.50
	Copy of order to serve, per folio	.10		.10
	Copy of order for taxing officer	.10		.10
.10	Drawing bill of costs, including engrossing and copy for taxing officer, per folio	.30		.20
	Copy of bill of costs to serve, per folio	.10		.10
	Attending for appointment to tax	.50		.25
	Notice of taxation and copy	.50		.25
	Attending to serve	.50		.25
.90	Instructions for affidavit of disbursements (if special)	1.00		.50
.10	Drawing and engrossing affidavit, per folio	.30		.30
	Attending to swear and paid	.50	.20	.25
.10	Paid marking each exhibit, each		.10	.10
	Copy of affidavit to serve, per folio	.10		.10
	Attending on taxation (in High Court cases per hour)	1.00		1.00
	Paid on taxation besides filings		.90	.80
	Paid filings, each		.10	.10
ourt.	Paid witness fees as per affidavit of disbursements.			

.02

.50

1.50

.20

PRECEDENT NO. 13.

DEFENDANT'S COSTS OF THE DAY.

High Court. County Court.

Having been served, with notice of trial.....				
Letter to client advising.....	\$.50	\$.02	\$.25	\$.02
Subpœna ad. test.....	1.00		.50	
Each additional folio over four.....	.15		.15	
Attending to issue and paid.....	.50	1.00	.25	.20
Subpœna <i>duce tecum</i>	1.25		.75	
Each additional folio over four.....	.15		.15	
Attending to issue and paid.....	.50	1.00	.25	.20
Copies of subpœna (only four taxable).....	1.00		.75	
Each additional folio over four.....	.10		.10	
Where served by sheriff, charge.....				
Attending sheriff with.....	.50		.25	
Paid sheriff conduct money.....				
Attending on return.....	.50		.25	
Affidavit of mileage.....	1.00		.75	
Where outside counsel employed, charge.....				
Attending counsel with and for brief.....	1.00		.50	
Counsel fee with brief at trial.....	10.00		5.00	
To be increased according to provisions of item 153, tariff A.....				
Where solicitor attends the trial and is not counsel, or partner of counsel, see item 93, tariff A.....				
Fee after trial.....	1.00		.50	
Paid sheriff.....		1.00	.80	
Paid erier calling ease.....		.60	.50	
Paid erier each witness.....		.15	.15	
Where jury sworn in C.C. cases, charge.....				
Paid C.C. Clerk.....			1.00	
Judge having postponed trial and ordered plaintiff to pay costs of the day.....				
Drawing order, per folio.....	.20		.20	
Fee on order.....	1.00		.50	
Attending for order.....	.50		.25	
Paid for order.....		.50	.50	
Copy of order to serve, per folio.....	.10		.10	
Copy of order for taxing officer.....	.10		.10	
Drawing bill of costs, including engrossing and copy for taxing officer, per folio.....	.30		.20	
Copy of bill of costs to serve, per folio.....	.10		.10	
Attending for appointment to tax.....	.50		.25	
Notice of taxation and copy.....	.50		.25	
Attending to serve.....	.50		.25	
Instructions for affidavit of disbursements (if special).....	1.00		.50	
Drawing and engrossing affidavit, per folio.....	.30		.30	
Attending to swear and paid.....	.50	.20	.25	.20
Paid marking exhibits, each.....		.10	.10	.10
Copy of affidavit to serve, per folio.....	.10		.10	
Attending on taxation (in H.C. cases per hour).....	1.00	1.00		
Paid on taxation besides filings.....		.90	.80	
Paid filings, each.....		.10	.10	
Paid witness fees as per affidavit of disbursements..				

PRECEDENT NO. 14.

DEFENDANT'S COSTS OF AN ORDINARY ACTION.

	High Court.	County Court.
Instructions to defend	\$4.00	3.00
Attending plaintiff's solicitor, giving undertaking to appear, when solicitor accepts service.....	1.00	.50
Drawing appearance and attending to enter.....	1.00	.50
Paid entering, one defendant.....	.20	.15
Each additional defendant.....	.10	.10
Notice of appearance, copy, and service (only allowed, when appearance entered, after time limited by writ).....	1.00	.50
Where demand for names and addresses, of plain- tiffs, being partners necessary, charge.....	1.00	.50
Demand copy and service	1.00	.50
Having been served with statement of claim, fee perusing	1.00	.50
If demand for particulars necessary, charge.....	.50	.25
Demand for particulars and copy.....	.50	.25
Attending to serve.....	.50	.25
Where it is necessary to apply for an order for par- ticulars, charge costs of an application to Chambers, see Precedent No. 41.....	1.50	1.00
Instructions for pleading.....	1.50	1.00
Drawing statement of defence, if five folios, or under	2.00	1.00
For every folio in addition.....	.20	.20
Attending counsel with, and for, to settle where counsel is not the solicitor, or the solicitor's partner.....	1.00	.50
Counsel fee settling (in the discretion of the tax- ing officer).....	5.00	3.00
Engrossing, per folio.....	.10	.10
Copy to file, per folio.....	.10	.10
Attending to file, and paid	.50	.25
Copy to serve, per folio	.10	.10
Attending to serve	.50	.25
If service not accepted, charge	1.00	.75
Affidavit of service, including attending to swear, and paid	1.00	.50
Fee after statement of defence	1.00	.50
If more than four copies of statement of defence are required, it should be printed in that case, charge		
Allowance for printing, in lieu of all copies, per folio	.30	.30
Attending printer, with	.50	.25
Revising proof, per folio	.10	.10
Attending printer for	.50	.25
Paid printer		
If there is a counter-claim, and such counter-claim could not, prior to the Ontario Judicature Act, 1881, have formed the subject of a set-off, charge	2.00	1.00
Instructions for counter-claim.....	2.00	1.00
Charge for attending, etc., fee settling, etc., as for statement of defence.....		

High Court. County Court.

Having been served by plaintiff's solicitors, with demand for particulars, drawing same, if not more than five folios.....	2.00	.75	
For every folio above five folios.....	.20	.15	
Engrossing, per folio.....	.10	.10	
Copy to file, per folio.....	.10	.10	
Copy to serve, per folio.....	.10	.10	
Attending to file, and paid.....	.50	.25	.10
Attending to serve.....	.50	.25	
If service refused, charge.....	1.00	.75	
Affidavit of service.....			
Charge.....			
Production, examinations for discovery, as in Precedent No. 11.....			
Having received reply.....			
Perusing same.....	1.00	.50	
Where joinder of issue necessary, charge.....			
Drawing joinder.....	2.00	1.00	
Engrossing, per folio.....	.10	.10	
Copy to file, per folio.....	.10	.10	
Attending to file, and paid.....	.50	.25	.10
Copy to serve, per folio.....	.10	.10	
Attending to serve, each.....	.50	.25	
If service refused, charge.....			
Affidavit of service.....	1.00	.75	
Fee after.....	1.00	.50	
Having been served with notice of trial.....			
Letter to client, advising.....	.50	.02	.25 .02
Charge.....			
Brief, notice to admit, notice to produce, counsel fee advising on evidence, subpoena, counsel fees, trial, judgment and taxation on the model of Precedent No. 11.....			

PRECEDENT NO. 15.

SPECIAL CASE, PLAINTIFF'S COSTS.

High Court. County Court.

Instructions for special case where writ issued and case stated during progress of action.....	\$2.00	\$1.00	
Where no writ issued, charge.....			
Instructions.....	3.00	2.00	
Drawing case, per folio.....	.20	.20	
Where settled by outside counsel, charge.....			
Attending counsel with and for, to settle.....	1.00	.50	
Fee settling in the discretion of the taxing officer not to exceed.....	5.00	3.00	
Engrossing case, per folio.....	.10	.10	
Copy to file and serve, per folio.....	.10	.10	
Attending to file.....	.50	.25	
Paid filing.....	\$.10	\$.10	
Attending to serve.....	.50	.25	.50 .25
Fee after special case.....	1.00	.50	
If motion for leave to set down special case necessary, as where special case affects the interests of an infant, married woman, or person of unsound mind, charge costs of motion, affidavits, etc., etc.....			

FORMS OF BILLS OF COSTS.

307

High Court. County Court.

Attending set down special case.....	.50	.25	
Paid setting down case.....		.50	.20
Paid filings, each.....		.10	.10
Notice of setting down and copy.....	.50	.25	
Attending to serve.....	.50	.25	
Copy of special case for judge, per folio.....	.10	.10	
Instructions for brief.....	2.00	.50	
Drawing brief up to five folios.....	2.00	1.00	
Each additional folio.....	.10	.10	
Where outside counsel is employed, charge.....			
Attending counsel with and for brief.....	1.00	.59	
Counsel fee on argument.....	10.00	5.00	
In High Court and Court of Appeal to be increased in the discretion of the taxing officer in Toronto but no more than two counsel fees to be al- lowed in any case.....			
In County Court cases to be increased in the dis- cretion of the judge to.....		10.00	
Where judgment reserved, charge.....			
Attending to hear judgment.....	2.00	1.00	
Drawing order and engrossing, per folio.....	.30	.30	
If order settled on appointment, charge in addition			
Copy of minutes, per folio.....	.10	.10	
Attending for appointment to settle and copy and attending to serve.....	1.50	.75	
Each additional copy.....	.10	.10	
Each additional attendance.....	.50	.25	
Attending settling order, per hour.....	1.00	.50	
Subject to increase in special cases to not exceeding	5.00	2.50	
Attending to enter and for order and paid.....	1.00	.50	
Fee on order.....	1.00	.50	
Copy of order to serve, per folio.....	.10	.10	
Copy of order for taxing officer (where necessary) per folio.....	.10	.10	
Drawing bill of costs, engrossing and copy for tax- ing officer, per folio.....	.30	.20	
Copy to serve, per folio.....	.10	.10	
Attending for appointment to tax.....	.50	.25	
Appointment and copy.....	.50	.25	
Attending to serve.....	.50	.25	
Attending on taxation (in High Court cases, per hour.....	1.00	1.00	
Attending for certificate (where necessary).....	.50	.25	
Attending to file certificate and paid.....	.50	.10	.25

PRECEDENT NO. 16.

SPECIAL CASE, DEFENDANT'S COSTS.

High Court. County Court.

Instructions.....	\$4.00	\$3.00	
Attending plaintiff's solicitors giving undertaking to appear and accepting service.....	1.00	.50	
Drawing appearance.....	.50	.25	
Attending to enter.....	.50	.25	
Paid entering appearance one defendant.....		.20	.15
Each additional defendant.....		.10	.10
If appearance entered after time limited for appear- ance has expired, charge.....			

	High Court.	County Court.
Notice of appearance and copy	.50	.25
Attending to serve notice	.50	.25
Having been served with special case		
Fee pursuing	2.00	1.00
Where outside counsel is employed, charge		
Attending counsel with and for to settle	1.00	.50
Counsel fee on settlement of special case in the discretion of the taxing officer, not to exceed, however	5.00	3.00
Attending plaintiff's solicitor with	.50	.25
Where the defendant or defendants or any of them are infants, married women, or persons of unsound mind, charge the costs of appearance on the motion for leave to set down the special case		
Having been served with notice of setting down special case		
Instruction for brief	2.00	.50
Drawing brief up to five folios	2.00	1.00
Each additional folio	.10	.10
Where outside counsel is employed, charge		
Attending counsel with and for brief	1.00	.50
For remaining charges see plaintiff's costs, special case, Precedent No. 15		

PRECEDENT NO. 17.

DEFENDANT'S BILL OF COSTS ON QUASHING A CONVICTION.

	High Court.	County Court.
Instructions to move to quash conviction	\$2.00	
Attending bespeak copy of evidence	.50	
Drawing notice of motion and engrossing, per folio	.30	
Copy for service on magistrate, per folio	.10	
Drawing notice to prosecutor and copy	.50	
Attending for copy of by-law	.50	
Drawing affidavit of defendant, per folio	.20	
Engrossing, per folio	.10	
Attending for copy of evidence	.50	
Paid, per folio	\$.10	
If evidence certified, paid for certificate	.50	
Attending swear affidavit and paid	.50	.20
Preparing exhibits, each	.10	
Paid commissioner marking same, each	.10	
Attending file affidavit and paid	.50	.10
Paid filing, each exhibit	.10	
Attending serve notice on magistrate	.50	
Attending serve informant	.50	
Attending on enlargement, each	1.00	
Attending before judge when order for certiorari granted	5.00	
Drawing order and engrossing, per folio	.30	
Fee on	1.00	
Letter to client advising and postage	.50	.02
Attending to issue order and paid	.50	.50
Paid filings, each	.10	
Attending to issue writ and paid	.50	1.10
Writ	2.00	

	High Court.	County Court.
Copy to serve.....	1.00	
Attending to serve.....	.50	
Affidavit of service.....	1.00	
Letter to client advising.....	.50	.02
Instructions for recognizance, drawing recognizance, affidavits, etc., and paid.....	5.00	.45
Fee on allowance of recognizance.....	1.00	
Instructions to move for rule nisi.....	1.00	
Attending to file return and paid.....	.50	.40
Motion paper, per folio, and paid filings, each.....	.20	.10
Attending on motion for rule granted.....	10.00	
To be increased in discretion of a taxing officer in Toronto.....		
Drawing rule nisi and engrossing, per folio.....	.30	
Fee on.....	1.00	
Attending to issue and paid.....	.50	1.60
Copy for service on magistrate, per folio.....	.10	
Copy for service on informant, per folio.....	.10	
Attending for admissions of service.....	.50	
Instructions to move to make rule absolute.....	2.00	
Attending to set down and paid.....	.50	.80
Instructions for brief.....	2.00	
Brief up to five folios.....	2.00	
Every additional folio.....	.10	
Attending on motion—rule nisi made obsolete with costs.....	10.00	
To be increased in the discretion of a taxing officer at Toronto.....		
Fee after argument.....	1.00	
Attending to hear judgment (when judgment reserved).....	2.00	
Attending bespeak and for order absolute and paid.....	1.00	.60
Fee on order.....	1.00	
Letter to client advising.....	.50	.02
Copy rule absolute, to serve, per folio.....	.10	
Attending to serve.....	.50	
Drawing bill of costs, including copy for taxing officer, per folio.....	.30	
Copy to serve, per folio.....	.10	
Attending for appointment to tax.....	.50	
Appointment and copy.....	.50	
Attending to serve.....	.50	
Copy rule absolute for taxing officer, per folio.....	.10	
Attending on taxation and paid.....	1.00	.90
Paid filings, each.....	.10	
Attending for certificate, if necessary.....	.50	
Attending to file certificate and paid.....	.50	.10

PRECEDENT NO. 18.

BILL OF COSTS OF APPELLANT ON AN APPEAL TO THE SUPREME COURT OF CANADA.

	Fees.	Disbursements.
Notice of appeal.....	\$ 4.00	
In election appeals where notice limits appeal.....	6.00	
Notice of security.....	2.00	
Attending to give security.....	3.00	

	Fees. Disbursements.
Fee on special case	25.00
(No fee is taxable in election appeals).	
Engrossing and superintending printing of case, 15 cents per folio.....	
(This is not taxable in election appeals).	
Paid printer for special case as per affidavit of disbursements	
Paid clerk.....	
Paid forwarding copies of special case.....	
Paid filing special case with registrar	\$ 10.00
Engrossing and superintending printing of factum, 15 cents per folio	
Paid printer for factum as per affidavit of disbursements...	
Fee on factum in the discretion of the registrar not to exceed	50.00
Paid search and inscribing appeal.....	.35
Fees to counsel and solicitor on hearing in the discretion of the registrar not to exceed.....	200.00
Paid necessary postages, telegrams and telephones.....	
Allowances to agents under Rule 82 in the discretion of the registrar not to exceed	20.00
Paid search for particulars	.25
Paid entering judgment	10.00
Paid appointment for taxation and taxation	1.50
Allocatur.....	1.00
Paid for each filing, 10 cents	
Paid for certified copy of judgment, 10 cents a folio and \$1.00 fee	
Paid registrar's postage.....	

PRECEDENT NO. 19.

RESPONDENT'S BILL OF COSTS OPPOSING APPEAL TO THE SUPREME COURT OF CANADA.

	Fees. Disbursements.
Attending to give security.....	\$ 3.00
(This fee is not taxable on election appeals).	
Fee on special case	25.00
(This fee is not taxable on election appeals).	
Engrossing and superintending printing of factum at 15 cents per folio.....	
Paid printer for factum as per affidavit of disbursements...	
Fee on factum in the discretion of the registrar not to exceed	50.00
Fees to counsel and solicitor on the hearing in the discretion of the registrar not to exceed.....	200.00
Paid necessary postage, telegrams, telephones.....	
Allowance on account of agent's fees under Rule 82 in the discretion of the registrar, not to exceed.....	\$20.00
Paid search for particulars.....	.25
Paid entering judgment	10.00
Paid appointment to tax and taxation	1.50
Allocatur.....	1.00
Paid filings 10 cents each	
Paid for certified copy of judgment 10 cents for each folio and \$1.00 fee.....	
Paid registrar's postage	

PRECEDENT NO. 20.

BILL OF COSTS OF AMENDMENT OF PLEADINGS.

	High Court. County Court.	
Instructions to amend.....	\$2.00	\$1.00
Where consent of the opposite party is obtained, charge		
Drawing consent, per folio	.20	.20
Engrossing consent per folio.....	.10	.10
Attending for.....	.50	.25
If order to amend necessary, charge		
Costs of obtaining same, as in precedent No. 41		
Drawing amendments per folio	.20	.20
Attending counsel with and for to settle (where counsel is not the solicitor nor solicitor's partner).....	1.00	.50
Fee settling, not exceeding.....	5.00	3.00
Where by the provisions of Rule 306, a fresh copy of the pleadings is necessary charge.....		
Engrossing, per folio	.10	.10
Copy to file, per folio.....	.10	.10
Copy to serve, per folio	.10	.10
Attending to file and paid	.50	.25
Attending to serve	.50	.25
Attending to make amendments	.50	.25
Paid amendments.....	.30	.25
Paid filing consent.....	.10	.10
Paid filing order	.10	.10
Making amendments, each folio.....	.10	.10
Demand for copy of pleadings served and copy.....	.50	.25
Attending to serve	.50	.25
Making amendments in pleadings served per folio..	.10	.10
Attending to return pleadings when amended.....	.50	.25

PRECEDENT NO. 21.

COSTS OF AN APPEAL TO A JUDGE IN CHAMBERS OF PARTY
MOVING.

	High Court. County Court.	
Instructions	\$2.00	\$1.00
Drawing notice of motion, per folio.....	.20	.15
Copy to serve, per folio.....	.10	
Each additional folio.....	.10	.10
Attending to serve each.....	.50	.25
Attending setting down appeal, and paid.....	.50	.25
Paid on each filing	.10	.10
Counsel fee when appeal argued.....	2.00	1.00
To be increased in the discretion of the taxing officer in cases in the High Court of Justice or Court of Appeal to a sum not exceeding.....	5.00	
To be increased in the discretion of the judge in County Court cases to a sum not exceeding.....		5.00
Subject to further increase in the discretion of the taxing officer at Toronto, provided that the Master in Chambers may in cases before him recommend a fee.....		
Where judgment reserved, charge.....		
Attending to hear judgment.....	1.00	.50

High Court. County Court.		
Drawing order, per folio.....	.20	.20
Where ordered settled charge.....		
Notice of settling and copy.....	.50	.25
Copy of minutes to serve, per folio.....	.10	.10
Attending to serve.....	.50	.25
Attending settling order, each hour.....	1.00	.50
To be increased in the discretion of the officer settling same in special and difficult cases where the solicitor attends personally, to a sum not exceeding altogether.....	5.00	2.50
Attending to bespeak and for order.....	1.00	.50
Paid for order.....	.50	.50
Attending to have order entered.....	.50	.25
Paid entering order, per folio.....	.10	.10
Copy of order to serve, per folio.....	.10	.10
Fee on order.....	1.00	.50
Attending to serve.....	.50	.25
Bill of costs, including engrossing and copy for taxing officer, per folio.....	.30	.20
Copy to serve, per folio.....	.10	.10
Attending for appointment to tax.....	.50	.25
Appointment, copy and service.....	1.00	.50
Attending on taxation (in High Court of Justice cases, per hour).....	1.00	1.00
Paid taxation.....	.90	.80
Paid filings, including bill and order, each.....	.10	.10

PRECEDENT NO. 22.

BILL OF COSTS OPPOSING APPEAL TO A JUDGE IN CHAMBERS.

High Court. County Court.		
Instructions to oppose appeal in the discretion of the taxing officer, not to exceed.....	\$2.00	\$1.00
Counsel fee, when appeal argued.....	2.00	1.00
To be increased in the discretion of the taxing officer, in cases in the High Court Justice or Court of Appeal, to a sum not exceeding.....		5.00
To be increased in the discretion of the Judge in County Court cases, to a sum not exceeding....		5.00
Subject to further increase in the discretion of the taxing officer at Toronto, provided that the Master in Chambers may, in cases before him, recommend a fee.....		
Where judgment reserved, charge.....		
Attending to hear judgment.....	1.00	.50
Drawing order, per folio.....	.20	.20
Where order settled, charge.....		
Notice of settling and copy.....	.50	.25
Copy of minutes to serve, per folio.....	.10	.10
Attending to serve.....	.50	.25
Attending to settle order, each hour.....	1.00	.50
To be increased in the discretion of the officer settling same, in special and difficult cases where the solicitor attends personally, to a sum not exceeding altogether.....	5.00	2.50
Attending to bespeak, and for order.....	1.00	.50
Paid for order.....	.50	.50

High Court, County Court.

Attending to have order entered.....	.50	.25	
Paid entering order, per folio.....		.10	.10
Copy of order to serve, per folio.....	.10	.10	
Fee on order.....	1.00	.50	
Attending to serve.....	.50	.25	
Bill of costs, including engrossing and copy for taxing officer, per folio.....	.30	.20	
Copy to serve, per folio.....	.10	.10	
Attending for appointment to tax.....	.50	.25	
Appointment copy and service.....	1.00	.50	
Attending on taxation (in High Court of Justice cases, per hour).....	1.00	1.00	
Paid taxation.....		.90	.80
Paid filings, including bill and costs and order, each		.10	.10

PRECEDENT NO. 23.

COSTS OF APPLICATION FOR LEAVE TO APPEAL TO THE PRIVY
COUNCIL.

IN THE PRIVY COUNCIL.

A. v. B.

£ s. d.

A. v. B. Attending to Mr. C. as to your desire that we should take up an appeal to the Privy Council from the decision of the Court of King's Bench on appeal in an action of A.V.B. and advising as to the course to be adopted.....	0	10	0
Attending Mr. C. on his handing us documents relating to the case, including judgment in the court of first instance, <i>factum</i> of appellant, <i>factum</i> of respondent, and judgment of Court of King's Bench on appeal	0	10	0
Perusing and considering these documents, folios 950 (at 6s. 8d. for every 25 folios)	12	13	4
Attending Mr. C. in further conference, and he wished us to present the petition at once for leave to appeal.....	0	10	0
Retainer fee.....	0	13	4
Instructions for petition for leave to appeal	1	0	0
Drawing petition (folios 25)	2	10	0
Attending counsel therewith to settle	0	10	0
Paid his fee and clerk.....	5	15	6
Attending your Mr. C. conferring further.....	0	10	0
Attending your Mr. C. when he desired petition presented at once, as he had to return to Canada shortly and we were to present it by Wednesday, so that it might come on on Saturday, and attending with him on Mr. H., who would settle same in time, and discussing as to certain queries which had arisen on petition.....	0	10	0
Fair copy, draft petition as settled by counsel, folios 25 (at 6d. per folio)	0	12	6
Attending Mr. C. in conference in reference to this case, and he instructed me to hand leading brief to Mr. F.	0	10	0
Attending your Mr. C. going through draft petition with him and advising as to certain alterations which he thought necessary, and we were to see Mr. H. on certain proposed alterations....	0	10	0
Attending Mr. H. thereon when he made certain alterations.....	0	10	0

	£	s.	d.
Attending Privy Council to ascertain if Committee would sit on Saturday, when informed they would, and making arrangements for presenting this petition to-morrow.....	0	10	0
Attending Mr. C. reporting and discussing further as to form of petition, when he desired a conference with Mr. H.....	0	10	0
Attending, appointing conference.....	0	10	0
Paid Mr. H. conference fee and clerk.....	5	15	6
Attending conference.....	1	0	0
Making further copies petition as revised, folios 25 (at 6d. per folio).....	0	12	6
Attending Mr. C. when he desired further alteration in the petition as we were to see Mr. H. again.....	0	10	0
Attending Mr. H. thereon, when he finally settled same.....	0	10	0
Attending Mr. C. when he approved petition as altered.....	0	10	0
Engrossing petition of appeal (folios 25).....	0	12	6
Attending at Privy Council office, lodging same.....	0	10	0
Paid.....	1	1	0
Instructions for and drawing affidavit in support of petition and engrossing same.....	0	10	0
Attending on Mr. C., swearing same.....	0	10	0
Paid entering petition.....	0	1	0
Attending lodging original papers in Privy Council office.....	0	10	0
Paid lodging affidavit.....	1	1	0
Instructions for and drawing brief in support of, and drawing observations and two fair copies.....	2	12	6
Attending Mr. F. (K.C.) therewith.....	1	0	0
Paid his fee and clerk.....	16	10	6
Fair copy petition for him.....	0	12	6
Fair copy affidavit, verifying same.....	0	2	0
Fair copy notice of hearing.....	0	2	6
Attending Mr. H. with brief.....	0	10	0
Paid his fee and clerk.....	11	0	6
Fair copy petition for him.....	0	12	6
Fair copy affidavit, verifying same.....	0	2	0
Fair copy, notice of hearing.....	0	2	6
Attending setting down petition.....	0	10	0
Paid.....	0	10	0
Paid summons.....	0	10	0
Paid messenger.....	0	2	6
Attending Mr. F. (K.C.), appointing consultation.....	0	10	0
Paid him fee and clerk.....	5	15	6
Attending Mr. H., appointing consultation.....	0	10	0
Paid him fee and clerk.....	5	15	6
Writing Mr. C. with note of appointment for consultation.....	0	5	0
Attending consultation with Mr. F. (K.C.) and Mr. H.....	1	0	0
Attending Privy Council when petition heard and order made upon terms.....	1	6	8
Attending at Privy Council, drawing up minutes for committee report.....	1	1	0
Paid for report.....	1	10	0
Paid messenger.....	0	2	6
Attending at Privy Council, paying fees and taking receipt.....	0	10	0
Paid for final order.....	3	2	6
Paid for two plain copies.....	0	10	0
Writing you with original order and two plain prints.....	0	5	0
Sessions fees.....	0	3	3
Paid petty charges.....	1	5	0
The above bill of costs is, of course made up as between solicitor and client.			

PRECEDENT NO. 24.

APPELLANT'S COSTS OF AN APPEAL TO THE PRIVY COUNCIL.
IN THE PRIVY COUNCIL.

On appeal from the Supreme Court of Canada between, etc., (*style of cause*). Costs of appellant to be taxed pursuant to the order of the Right Honourable the Lords of the Judicial Committee of the Privy Council (dated, etc.)

	£.	s.	d.	£.	s.	d.
Retaining fee.....				0	13	4
Drawing and copy retainer to counsel.....				0	10	0
Paid his fee and clerk.....	2	7	0			
Attending him.....				0	10	0
Attending, obtaining prints of record of proceedings....				0	10	0
Perusing record (35 sheets).....				31	10	0
Instructions for petition of appeal.....				0	10	0
Drawing same (folios 20).....				0	2	0
Engrossing.....				0	10	0
Attending to lodge.....				0	10	0
Paid fee on lodging.....	1	1	0			
The like on entering.....	1	1	0			
Attending searching, whether respondent had appeared						
Copy petition of appeal for respondent's solicitor.....				0	10	0
Attending them therewith.....				0	10	0
Instructions for case.....				1	0	0
Drawing same (folios 140).....				14	0	0
Fair copy for settlement.....				3	10	0
Copy petition of appeal for counsel.....				0	10	0
Attending counsel with papers.....				0	10	0
Paid his fee.....	22	1	0			
Attending him.....				0	10	0
Attending respondent's solicitors, conferring on appeal						
and arranging.....						
Attending respondent's solicitors on their inquiring						
whether I was prepared to exchange cases, explain-						
ing that same would be lodged shortly and it was						
arranged that they should not apply for orders						
requiring appellant's case to be lodged at present.						
Copy cases for printers as finally settled.....				1	15	0
Attending them giving instructions.....				0	10	0
Examining and correcting proof and revised prints of						
case.....				1	11	6
Attendances on printers with revised and corrected						
prints of case, and ordering copies.....						
Paid printers' charges.....				0	10	0
Attending them.....				0	10	0
Attending at council office, lodging forty prints.....						
Paid fee on lodging.....	1	1	0			
Notice of lodging copy and service.....				0	5	0
Paid fee on setting down appeal.....	0	10	0			
Attending exchanging cases.....				0	10	0
Perusing respondent's case.....				1	1	0
Attending at council office, obtaining prints of record						
and cases to be bound for their lordships.....				0	10	0
Preparing label to be printed thereon, and attending						
giving instructions for printing and binding.....				0	10	0
Paid printers' charges.....				0	10	0
Attending paying.....				0	10	0
Attending at council office with bound prints.....				0	10	0

	£. s. d.	£. s. d.	
Instructions to counsel to argue appeal.....		1 0 0	I
Copy petition of appeal for him.....		0 10 0	
Paid his fee, with brief and clerk.....	33 1 6		
Attending him.....		1 0 0	
Instructions to Mr....., to argue appeal.....		1 0 0	
Paid his fee, with brief and clerk.....	27 11 6		
Attending him.....		0 10 0	
Attending both counsel, appointing consultation.....		1 0 0	
Paid consultation fee to senior counsels.....	5 15 6		F
Attending him.....		0 10 0	A
Paid consultation fee to junior counsels.....	5 15 6		P
Attending them.....		0 10 0	N
Attending consultations.....		1 0 0	P
Paid for summons to attend hearing.....	0 10 0		
Paid messenger.....	0 2 6		
Two copies for counsel, attending him.....		0 10 0	
Attending court, appeal part heard.....		3 6 8	I
Paid refresher fee to Mr....., and clerk.....	11 0 6		A
Attending him.....		0 10 0	P
Refresher to junior counsel and clerk.....	11 0 6		W
Attending him.....		0 10 0	
Attending court when appeal further heard and judgment reserved.....		3 6 8	A
Instructions to senior counsel to hear judgment.....			
Paid his fee, and clerk's.....	5 15 6		
Attending him.....		0 10 0	
Paid fee to junior counsel and clerk.....	5 15 6		
Attending him.....		0 10 0	
Paid for summons to attending hearing of judgment....		0 10 0	
Paid messenger.....	0 2 6		In
Two copies for counsel, and attending them.....		0 10 0	Co
Attending court, judgment delivered allowing appeal with costs.....		1 6 8	Fe
Paid for committee report.....	1 10 0		At
Attending, paying counsel office fees and taking receipt		0 10 0	W:
Paid for committee ordered to tax.....	1 12 6		
Drawing bill of costs, and copy for taxation (folios fourteen).....		1 1 0	W:
Attending lodging costs.....		0 10 0	
Copy order and appointment for respondent's solicitors		0 5 0	W:
The like costs.....		0 7 0	
Attending them.....		0 10 0	Att
Attending taxing costs.....		2 2 0	
Paid taxing fee.....	3 3 0		
Paid for order of His Majesty in Council.....	3 2 6		The
Paid messenger.....	0 2 6		Wri
Paid for two copies of the order.....		0 10 0	
Attending at the counsel office, obtaining same.....		0 10 0	
Writing appellant's agent with order and copies, and attending to dispatch.....		0 10 0	Atta
Sessions fees.....		6 6 0	Atta
Extra messengers, letters, cab-hire, etc.....		3 3 0	Atta

PRECEDENT NO. 25.

RESPONDENT'S COSTS OF AN APPEAL TO THE PRIVY COUNCIL.

IN THE PRIVY COUNCIL.

On appeal from the Supreme Court of Canada, between, etc. (*style of cause*). Respondents' costs to be taxed pursuant to an order of the Judicial Committee of the Privy Council.

	£ s. d.	£ s. d.
Retaining fee.....		0 13 4
Attending at Privy Council offices, entering appearance..		0 10 0
Paid.....	0 10 0	
Notice, copy and service.....		0 5 0
Perusing order for leave to appeal, and copy petition of appeal.....		1 1 0
Perusing official copy of the proceedings (120 brief sheets).....		12 6 8
Instructions for and preparing retainer to Mr. —, K.C.		0 10 0
Attending him therewith.....		0 10 0
Paid his fee and clerk.....	2 7 0	
Writing appellant's solicitor that I had inquired at the Privy Council office, but found nothing had been heard from them on behalf of the appellants, and inquiring the cause of delay on their side.....		0 5 0
Attending appellant's solicitor going through record, and they read to me their counsel's opinion as to the parts that might be omitted, and discussing matter, and it was finally arranged that they should send me the record with their views on the matter for my consideration.....		1 1 0
Instructions for case to counsel to advise as to record..		0 10 0
Copy petition of appeal (folios ten).....		0 5 0
Fee to counsel and clerk.....	5 15 6	
Attending him.....		0 10 0
Writing appellant's solicitors in reply to their letter enclosing record that I was taking counsel's opinion upon same, and immediately I received opinion would return record to them.....		0 5 0
Writing appellant's solicitor with record and as to the addition the counsel advised to be printed, and clerk's attendance		0 5 0
Writing appellant's solicitors in reply that I did not think it necessary to print the trading account.....		0 5 0
Attending appointment at Privy Council office, examining print of record with original. (Engaged all day).....		2 2 0
The like.....		2 2 0
Writing appellant's solicitors returning print of the record approved and clerk's attendance.....		0 5 0
Attendants at Privy Council offices revising and completing examination of proof of record (nine sheets)		4 14 6
Attending appellant's solicitors on their calling with proof, and examining same.....		0 10 0
Attending at Privy Council office taking up six copies of records.....		0 10 0
Instructions for respondent's case.....		1 0 0
Drawing same (folios forty-three).....		4 6 0
Copy case for counsel.....		1 1 6
Fee to counsel and clerk to settle case.....	11 0 6	

	£. s. d.	£. s. d.
Attending him.....		0 10 0
Writing appellant's solicitors inquiring when they would be ready to exchange cases, and we expected to have our case ready by the end of the month, and clerk's attendance.....		0 5 0
Instructions to Mr. —, K.C., to peruse and settle draft case.....		0 2 0
Copy draft case for him.....		1 1 6
Paid his fee to settle and sign case.....	27 11 6	
Attending him.....		0 10 0
Attending appointing consultation.....		0 10 0
Paid his fee and clerk.....	5 15 6	
Attending Mr. — appointing consultation.....		0 10 0
Fee to him and clerk.....	5 15 6	
Attending consultation settling case.....		1 0 0
Copy case for printer (folios forty-three).....		1 1 6
Attending printer, instructing him.....		0 10 0
Examining and correcting proofs (at per sheet).....		0 10 6
Attending printer, instructing him to print copies.....		0 10 0
Paid printer's charges.....	2 10 0	
Attending at Privy Council office lodging case.....		0 10 0
Paid on lodging.....	1 1 0	
Writing appellant's solicitor thereon and to lodge their case, and for an appointment to exchange.....		0 5 0
Attending exchanging cases.....		0 10 0
Persuading appellant's case (folios fifty-four).....		1 1 0
Paid setting down case for hearing.....	0 10 0	
Sessions fee.....		3 3 0
Instructions for brief on hearing of appeal.....		2 0 0
Fee to Mr. —, K.C., with brief and papers.....	33 1 6	
Attending him.....		1 0 0
Fee to Mr. —, with brief and papers.....	22 1 0	
Attending him.....		0 10 0
Attending Mr. —, K.C., appointing consultation.....		0 10 0
Consultation fee to him and clerk.....	5 15 6	
Attending Mr. —, appointing consultation.....		0 10 0
Fee to him and clerk.....	5 15 6	
Attending Registrar Privy Council at his request, informing him that no judge's reasons had been sent thereon and as to date of hearing.....		0 10 0
Attending appellant's solicitor on their informing us that they had seen the registrar and Thursday next would suit them for the hearing and arranging accordingly.....		0 10 0
Attending consultation.....		1 0 0
Paid fee on notice of hearing.....	2 6 0	
Paid fee on summons.....	0 10 0	
Attending Mr. —, K.C., informing him of date fixed for hearing.....		0 5 0
The like Mr. —,.....		0 5 0
Attending council chamber when appeal heard and judgment reserved.....		3 6 8
Paid messenger from Privy Council with summons to attend and hear judgment.....	0 2 6	
Paid fee on summons.....	0 10 0	
Instructions to counsel (junior) to attend and hear judgment.....		0 5 0
Paid his fee and clerk.....	5 15 6	
Attending him.....		0 10 0

FORMS OF BILLS OF COSTS.

319

S. D.		£ S. D.	£ S. D.
10 0	Attending at council chambers when appeal dismissed with costs.....		1 6 8
	Paid for committee's report.....	1 10 0	
	Attending for order to tax.....		0 10 0
5 0	Paid.....	1 12 6	
	Drawing costs and copy (folios).....		0 10 0
2 0	Attending lodging same.....		0 8 6
1 6	Copy costs for appellant's solicitor.....		0 10 0
	Attending appellant's solicitor with costs.....		2 2 0
10 0	Attending taxing.....		
10 0	Paid taxing fees.....	3 3 0	
	Paid for final order.....	3 2 6	
10 0	Paid for two copies.....	0 10 0	
	Attending for same.....		0 10 0
0 0	Attending a Privy Council office paying fees.....		0 10 0
1 6	Writing solicitor in Canada reporting result fully.....		0 5 0
10 0	Sessions fee.....		3 3 0
10 6	Letters, messengers, postages to Canada, etc.....		3 3 0
10 0			

PRECEDENT NO. 26.

PLAINTIFF'S COSTS OF A FORECLOSURE ACTION WHERE THERE ARE NO SUBSEQUENT INCUMBRANCES AND JUDGMENT OBTAINED ON PRECIPES.

		High Court.	County Court.
	Instructions.....	\$3.00	\$2.00
	Letter to each defendant.....	.50	\$.02
	Attending to search title in registry office (taxing officer will allow a reasonable sum, according to time occupied).....		
	Paid search in registry office.....		
	Attending to bespeak, and for abstract subsequent to mortgage.....	1.00	.50
	Attending registrar with fees.....		
	Paid for abstract.....		
	Attending for tax certificate, and paid.....	.50	.25
	Writ of summons.....	2.00	1.00
	If over four folios, for every folio in addition.....	.20	.20
	Attending for writ, and paid.....	.50	1.10
	Copy of writ to serve.....	1.00	.75
	If over four folios, for every folio in addition.....	.10	.10
	If served by sheriff, charge as in Precedent No. 1.		
	If not served by sheriff, if taxable to solicitor, on sheriff's default, charge as in Precedent No. 1.		
	Attending to search appearance, and paid.....	.50	.10
	Attending to bespeak, and for continued abstract..	1.00	.50
	Paid registrar.....		
	Attending or letter to registrar, with fees.....	.50	.25
	Attending for sheriff's certificate.....	.50	.25
	Paid sheriff (not to exceed in all).....	4.00	4.00
	Attending, or letter to sheriff, with fees.....	.50	.25
	Attending settling report, per hour.....	1.00	.50
	To be increased in the discretion of the taxing officer in Toronto, or by the County judge in County Court cases to, not exceeding, per hour	2.00	1.00
	Paid master each hour.....	1.50	.50
	Paid master drawing report, per folio.....	.20	.20
	Attending for master's report.....	.50	.25
	Paid master for copy of report.....	.10	.10

	High Court. County Court.			
Paid master's fee on report.....	2.00			
Paid master each filing.....	.10		.10	
Making copy of report, per folio.....	.10		.10	
Attending to file report.....	.50		.25	
Paid filing.....	.10		.10	
Charge costs of obtaining final order of foreclosure, as in Precedent No. 27, and then.....				
Attending to bespeak, and for certificate of final order of foreclosure for registration.....	1.00		.50	
Paid, including filings.....		1.10		.30
Attending to register certificate, and paid.....	.50		.25	
Affidavit of non appearance.....	1.00		.75	
Instructions for taking account and for affidavit verifying same in the discretion of the taxing officer.....	1.00		.50	
Drawing plaintiff's account, per folio.....	.20		.20	
Engrossing, per folio.....	.10		.10	
Preparing exhibits, each.....	.10		.10	
Attending to swear and paid.....	.50	.20	.25	.20
Paid marking each exhibit.....		.10		.10
Attending to take account, per hour.....	1.00		.50	
Paid taking accounts.....		1.00		.50
Paid each filing.....		.10		.10
Attending to bespeak for judgment and paid.....	1.00	1.60	.50	.50
Drawing bill of costs, engrossing and copy for taxing officer, per folio.....	.30		.20	
Attending for appointment to tax.....	.50		.25	
Attending taxation (in High Court cases, per hour).....	1.00		1.00	
Paid taxation besides filings.....		.90		.80
Attending for certificate.....	.50		.25	
Fee on judgment.....	4.00		2.00	
If defendant makes default in paying money at the time and place appointed, charge.....				
Instructions to obtain final order of foreclosure.....	2.00		1.00	
Attending bank to search if money paid.....	.50		.25	
Drawing bank manager's certificate and engross- ing, per folio.....	.30		.30	
Attending for.....	.50		.25	
Drawing affidavit verifying and engrossing, per folio.....	.30		.30	
Attending swear and paid.....	.50	.20	.25	.20
Preparing each exhibit.....	.10		.10	
Paid marking each exhibit.....		.10		.10
Drawing affidavit of plaintiff and engrossing, per folio.....	.30		.30	
Attending swear and paid.....	.50	.20	.25	.20
Preparing each exhibit.....	.10		.10	
Paid marking each exhibit.....		.10		.10
Attending chambers moving.....	1.00		.50	
Attending to bespeak and for.....	1.00		.50	
Fee on order.....	1.00		.50	
Attending to have order entered and paid entering per folio.....	.50	.10	.25	.10
Paid filings.....				
Attending to bespeak and for certificate of final order to register and paid, including filing præcipe.....	1.00	1.10	.50	.30
Attending to register certificate.....	.50		.25	
Paid registrar.....				

PRECEDENT NO. 27.

PLAINTIFF'S COSTS OF A FORECLOSURE ACTION WHERE THERE
ARE SUBSEQUENT INCUMBRANCES AND JUDGMENT
OBTAINED ON PRECIPE.

Charge on model of Precedent No. 26, as follows:—Instructions, writ and
service of writ. Then as follows:—

	High Court. County Court.			
Attending to search, appearance, and paid	\$0.50	\$0.20	\$0.25	\$0.10
Affidavit of non-appearance.....	1.00		.75	
Judgment	1.00		.50	
Attending to bespeak, and for judgment.....	1.00		.50	
Paid for judgment		1.60		.50
Paid filings, each		.10		.10
Fee on judgment.....	4.00		2.00	
Copy of judgment for master, per folio		.10		.10
Attending master with copy of judgment, etc., con- sidering, and for warrant and notice to incum- brances per hour.....	1.00		.50	
To be increased in the discretion of the taxing officer in Toronto, or by the County judge in County Court cases to.....	2.00		1.00	
Drawing notice to subsequent incumbrances, per folio		.20		.20
Engrossing, per folio.....		.10		.10
Paid master, per hour		1.50		.50
Paid master, filing and entering judgment.....		.20		.20
Paid master, filing abstract.....		.10		.10
Paid master, filing sheriff's certificate.....		.10		.10
Paid master, each other filing		.10		.10
Paid master, for warrant.....		.50		.10
Paid master, settling notice T.....		1.00		.30
Copy of notice T. to serve, per folio	.10		.10	
Copy of judgment to serve, when directed to do so, per folio	.10		.10	
Copy of warrant to serve, per folio.....	.10		.10	
Attending to serve subsequent incumbrances, each	.50		.25	
Affidavit of service.....	1.00		.25	
If service not effected by solicitor, but made by sheriff, charge				
Attending sheriff, with.....	.50		.25	
Paid sheriff's fees.....				
Attending sheriff on return.....	.50		.25	
Attending, or letter to sheriff, with fees.....	.50		.25	
Affidavit of mileage.....	1.00		.75	
Instructions for account and affidavit, verifying account (in the discretion of the taxing officer)	1.00		.50	
Drawing account, and engrossing, per folio	.30		.30	
Drawing affidavit, verifying and engrossing, per folio	.30		.30	
Attending, swear, and paid.....	.50	.20	.25	.20
Preparing each exhibit.....		.10		.10
Paid marking each exhibit.....		.10		.10
Attending on return of warrant taking accounts, per hour.....	1.00		.50	
To be increased in the discretion of the taxing officer in Toronto, or by the County judge in County Court cases to, not exceeding per hour	2.00		1.00	

	High Court.	County Court.
Paid master, per hour.....	1.50	.50
Drawing bill of costs, engrossing, and copy for master, per folio.....	.30	.20
Copy to serve each, per folio.....	.10	.10
Attending for appointment to tax.....	.50	.25
Notice of taxation and copy.....	.50	.25
Attending to serve each.....	.50	.25
Attending on taxation (in High Court cases, per hour).....	1.00	1.00
Paid on taxation.....	.90	.80
Faid filings, each.....	.10	.10
Attending for certificate.....	.50	.25
Attending file certificate.....	.50	.25
Paid filing.....	.10	.10

PRECEDENT NO. 28.

PLAINTIFFS COSTS OF AN ACTION FOR SALE UNDER MORTGAGE
WHERE THERE ARE SUBSEQUENT INCUMBRANCES AND
JUDGMENT IS OBTAINED ON PRÆCIPLE.

Charge on the model of Precedent No. 27: Instructions, Writ, Service of Writ, Judgment and Final Order and then charge:—

	High Court.	County Court.
Copy of judgment for master, per folio.....	\$0.10	\$0.10
Attending master, considering judgment, etc., per hour.....	1.00	.50
To be increased in the discretion of the taxing officer in Toronto, or by the county judge in County Court cases to, not exceeding.....	2.00	1.00
Paid master, per hour.....	\$1.50	\$0.50
Paid master, each filing.....	.10	.10
Paid master, for warrant.....	.50	.10
Paid master, entering judgment, per folio.....	.20	.10
Copies of warrant to serve, per folio.....	.10	.10
Each attendance to serve.....	.50	.25
Affidavit to service.....	1.00	.75
Drawing advertisement of sale.....	2.00	1.00
(This charge includes all copies, except copies for printer).		
For each folio over five folios, in addition.....	.20	.15
(Where it is made apparent to the master that special information has been obtained for the purpose of the sale, the master has discretion to increase this allowance to a sum not exceeding \$10.00).		
Instructions for affidavit, in the discretion of the taxing officer, verifying advertisement as to competency of auctioneer, and as to reserve bid, etc.....	1.00	.50
Drawing and engrossing affidavit, verifying advertisement, per folio.....	.30	.20
Attending to swear, and paid.....	.50	.25
Preparing each exhibit.....	.10	.10
Paid marking exhibit.....	.10	.10
Drawing exhibit as to reserve bid and engrossing, per folio.....	.30	.20

		High Court.	County Court.
Court.			
.50	Attending, swear and paid	.50	.25
	Drawing affidavit as to competency of auctioneer, and engrossing, per folio	.30	.20
	Attending, swear and paid	.50	.25
	Attending master on settlement of advertisement, per hour	1.00	.50
	To be increased by the taxing officer in Toronto, and by the county judge in County Court cases to a sum not exceeding, per hour	2.00	1.00
.80	Paid master each hour engaged	1.50	.50
.10	Paid master each filings	.10	.10
	Paid master, settling advertisement, per folio	.10	.10
	Paid master, fixing reserve bid	.50	.20
.10	Paid master, settling condition of sale, per folio	.10	.10
	Attending auctioneer	1.00	.50
	Copy of advertisement for printer, per folio	.10	.10
	Copy of advertisement for newspaper, per folio	.10	.10
PAGE	Attending printer with	.50	.25
	Attending for proof	.50	.25
	Revising proof	1.00	.50
	Attending printer with proof	.50	.25
	Attending for poster	.50	.25
ice of	Paid printer		
	Attending bill poster with	.50	.25
Court.	Drawing bill poster's affidavit and engrossing, per folio	.30	.20
	Attending, swear and paid	.50	.25
	Paid marking exhibit, each	.10	.10
	Preparing each exhibit	.10	.10
	Paid bill poster		
	Attending newspaper with copy of advertisement	.50	.25
\$0.50	Paid insertions		
.10	Attending to search newspapers for advertise- ment	.50	.25
.10	Drawing affidavit of publication and engrossing, per folio	.30	.20
.10	Attending, swear and paid	.50	.25
	Paid marking each exhibit	.10	.10
	Preparing each exhibit	.10	.10
	Drawing and engrossing contract, per folio	.30	.20
	Copy of contract and conditions of sale for auc- tioneer, per folio	.10	.10
.15	Fee on conducting sale where sale held where solicitor resides and does not occupy more than three hours	5.00	3.00
	For every hour over three hours in addition	1.00	.75
	Where sale conducted elsewhere and solicitor at- tends with master's approval	10.00	5.00
	If sale occupies more than one day the master may allow in addition to travelling expenses a sum not exceeding \$20.00		
	Paid auctioneer (generally one per cent. up to \$2,000.00 and one fourth of one per cent. on balance)		
.20	Drawing and engrossing affidavit of auctioneer as to result of sale, per folio	.30	.20
.10	Attending, swear and paid	.50	.25
	Preparing each exhibit	.10	.10

	High Court. County Court.			
Paid marking each exhibit	.10		.10	
Attending for direction for bank to receive deposit (where deposit made on purchase) and paid....	.50	.30	.25	.30
Attending bank with deposit.....	.50		.25	
Attending Master for warrant to settle.....				
Report on sale.....	.50		.25	
Paid for warrant.....	.50		.10	
Paid master each filing.....		.10		.10
Each copy of warrant to serve, per folio	.10		.10	
Attending to serve warrant, each.....	.50		.25	
Attending Master settling report, etc., per hour.....	1.00		.50	
To be increased in the discretion of the taxing officer in Toronto or by the county judge in County Court cases to not exceeding, per hour	2.00		1.00	
Paid master, per hour.....		1.50		.50
Paid master drawing report, per folio.....		.20		.20
Paid master fee on report.....		2.00		
Paid master for copy of report, per folio.....		.10		.10
Attending for report	.50		.25	
Copy of report to keep, per folio.....	.10		.10	
Attending to file report.....	.50		.25	
Paid filing report.....		.10		.10
If conveyance settled by master and abstract de- manded and requisitions on title and objections to title considered; charge for the actual work done by solicitor and disbursement paid to master, etc.....				
If it is necessary to take a subsequent account, charge				
Instructions for subsequent account (in the discre- tion of the taxing officer	2.00		1.00	
Drawing and engrossing account, per folio.....	.30		.20	
Drawing and engrossing affidavit verifying accounts, per folio	.30		.20	
Attending, swear and paid.....	.50	.20	.25	.20
Preparing each exhibit.....	.10		.10	
Paid marking each exhibit		.10		.10
Attending master taking subsequent account, per hour	1.00		.50	
To be increased in the discretion of the taxing officer in Toronto or by the county judge in County Court cases to not exceeding, per hour	2.00		1.00	
Paid master, per hour.....		1.50		.50
Paid master drawing report, per folio		.20		.20
Paid master's fee on report.....		2.00		
Paid master for copy of report, per folio.....		.10		.10
Paid master each, filing		.10		.10
Copy of report to keep, per folio.....	.10		.10	
Attending to file report and paid.....	.50	.10	.25	.10
Charge drawing bill of costs, etc., and taxation as in Precedent No. 27.....				
Attending to bespeak cheque for claim and costs....	.50		.25	
Paid including filing affidavit.....		.70		.70
Attending for cheque.....	.50		.25	
Letter to client advising and inclosing.....				

PRECEDENT NO. 29.

PLAINTIFF'S COSTS OF AN ACTION FOR SALE UNDER MORTGAGE
WHERE THERE ARE NO INCUMBRANCES AND JUDGMENT
OBTAINED ON PRÆCIPÉ

Charge: Instructions, Writ of Summons, Service of Writ of Summons, Judgment, Reference, Final Order, Sale Proceedings, Proceedings on Settling Conveyance and taking Subsequent Account on the Model of Precedent No. 28, omitting all fees and disbursements occasioned by the incumbrancers.

PRECEDENT NO. 30.

PLAINTIFF'S COSTS OF A FORECLOSURE ACTION WHERE
JUDGMENT IS OBTAINED AFTER TRIAL.

Charge on Model of Precedent No. 11: Instructions, Writ of Summons, Service of Writ of Summons, Statement of Claim, Examination for Discovery, Production of Documents, Amendments, Proceedings prior to Trial and Trial. Charge on Model of Precedent No. 28: Judgment, Final Order as on Model of Precedent No. 28 and Reference as in Model of Precedent No. 29.

PRECEDENT NO. 31.

PLAINTIFF'S COSTS OF A MORTGAGE ACTION FOR SALE WHERE
JUDGMENT IS OBTAINED AFTER TRIAL.

Charge on Model of Precedent No. 11: Instructions, Writ of Summons, Service of Writ of Summons, Statement of Claims, Examinations for Discovery, Production of Documents, Amendments of Writ or Pleadings, Joinder, etc., then charge:—

High Court, County Court.

Attending to bespeak and for continued abstract and paid registrar	\$ 1.00	\$.50
Attending sheriff for certificate and paid	.50	.25
Drawing bill of costs, engrossing and copy for taxing officer, per folio	.30	.20
Copy to serve, per folio	.10	.10
Attending for appointment to tax	.50	.25
Appointment copy and service	1.00	.50
If judgment settled, charge		
Drawing and engrossing judgment, per folio	.30	.30
Attending for appointment to settle judgment	.50	.25
Appointment copy and service	1.00	.50
Attending on settlement of judgment, per hour	1.00	.50
To be increased in the discretion of the taxing officer to a sum not exceeding	5.00	2.50
Instructions for affidavit of disbursements (if special)	1.00	.50
Drawing and engrossing same, per folio	.30	.20
Attending to swear and paid	.50 \$.20	.25 \$.20
Copy to serve, per folio	.10	.10
Attending on taxation (in High Court cases, per hour)	1.00	1.00
Paid on taxation	.90	.80
Paid filings, each	.10	.10

High Court. County Court.

Paid witness fees as per affidavit of disbursements..			
Attending for certificate where necessary	.50	.25	
Attending for judgment.....	.50	.25	
Attending to enter judgment.....	.50	.25	
Paid		1.60	.50
Paid computation		1.00	.50
Fee on judgment.....	1.00	.50	

Charge in addition Costs of Final Order, Sale Proceedings, Proceedings on Settling Conveyance and taking Subsequent Account on the Model of Precedent No. 28.

PRECEDENT No. 32.

PLAINTIFF'S COSTS OF REFERENCE (AFTER TRIAL).

Charge on the Model of Precedent No. 11 down to entry of judgment, then charge:—

High Court. County Court.

Instructions for reference in the discretion of the taxing officer	\$2.00	\$1.00	
Copy of judgment for Master, per folio.....	.10	.10	
Attending to file copy of judgment and paid filing	.50	.10	.25 \$.10
Attending Master for warrant.....	.50	.25	
Attending Master considering judgment, and for appointment to proceed, per hour.....	1.00	.50	
To be increased in the discretion of the taxing officer, in Toronto, or by the County Court judge, in County Court cases, to a sum not exceeding, per hour.....	2.00	1.00	
Paid Master, per hour		1.50	.50
Appointment copy and service.....	1.00	.50	
Attending to serve	.50	.25	
Letter to plaintiff, advising and postage.....	.50	.02	.25 .02
Subpœna ad. test.....	1.00		
If over four folios, for every additional folio.....	.15	.15	
Attending to issue and paid	.50	1.00	.25 .20
Copy to serve each (not exceeding four altogether)	1.00	.75	
Over four folios, for every additional folio	.10	.10	
Subpœna duces tecum.....	1.25	.75	
For over four folios, each additional folio	.15	.15	
Attending to issue and paid.....	.50	1.00	.25 .20
Copy to serve, each (not exceeding four altogether)	1.00	.75	
If over four folios each additional folio.....	.10	.10	
If subpœna served by sheriff, charge			
For service as in Precedent No. 11			
Additional matter in brief, per folio.....	.10	.10	
Original and necessary matter to add to brief, per folio	.20	.20	
Attending counsel with, and for brief, where counsel is not a solicitor or solicitor's partner..	1.00	.50	
Attending Master, each hour engaged	1.00	.50	
To be increased in the discretion of the taxing officer, in Toronto, or County Court clerk in County Court cases, to a sum not exceeding	2.00	1.00	
Where the attendance of counsel is necessary, charge, instead of above attendances, counsel fee on reference.....	5.00	3.00	

High Court. County Court.

To be increased in special and important matters requiring the attendance of counsel, in the discretion of the taxing officer, in Toronto, or the County Court clerk in County Court cases, to not exceeding.....	10.00		
Paid Master, per hour.....	1.50		.50
Paid Master, marking each exhibit.....	.20		.10
Paid Master, administering each oath.....	.20		.20
Paid Master drawing report, per folio.....	.20		.20
Paid Master for copy of report, per folio.....	.10		.10
Paid Master, fee on report.....	2.00		
Attending for report.....	.50	.25	
Paid Master each filing.....	.10		.10
Making copy of report, per folio.....	.10	.10	
Attending to file report and paid.....	.50	.10	.25 .10

PRECEDENT NO. 33.

COSTS OF AN EX PARTE CHAMBER MOTION.

High Court. County Court.

Instructions to move in the discretion of the taxing officer.....	\$2.00	\$1.00	
Drawing and engrossing affidavits, per folio.....	.30	.30	
Attending to swear and paid.....	.50	.20 .25	.20
Preparing each exhibit.....	.10	.10	
Paid marking each exhibit.....		.10	.10
Attending chambers on motion.....	1.00	.50	
To be increased in the discretion of the taxing officer or by the County Court judge in County Court cases, to.....	2.00	1.00	
Drawing order, per folio.....	.20	.20	
Attending to issue order.....	.50	.25	
Paid on order.....		.50	.50
Attending to enter order.....	.50	.25	
Paid entering, per folio.....		.10	.10
Fee on order.....	1.00	.50	
Copy of order to serve, per folio.....	.10	.10	
Attending to serve.....	.50	.25	
Copy of order for taxing officer, per folio.....	.10	.10	
Bill of costs, attending on taxation, etc., etc., as in Precedent No. 11, charge.....			

PRECEDENT NO. 34.

COSTS OF AN EX PARTE COURT MOTION.

High Court. County Court.

Instructions in the discretion of the taxing officer, not exceeding.....	\$2.00	\$1.00	
Drawing affidavit in support of motion and engrossing, per folio.....	.30	.30	
Attending to swear and paid.....	.50	\$0.20 .25	\$0.20
Preparing each exhibit.....	.10	.10	
Paid marking each exhibit.....		.10	.10
Attending to file affidavit, and paid.....	.50	.10 .25	.10
Instructions for brief.....	2.00	.50	
Drawing brief, not exceeding five folios.....	2.00	1.00	
Each folio above five folios.....	.10	.10	

High Court. County Court.

Attending counsel with, and for brief, if counsel, not solicitor, nor solicitor's partner.....	1.00	.50	
Counsel fee on motion.....	2.00	1.00	
Counsel fee on motion in special cases.....	5.00	2.00	
To be increased in the discretion of the taxing officer, in Toronto, or by County Court judge, in County Court cases, to not exceeding.....	10.00	5.00	
If judgment reserved, charge.....			
Fee attending to hear judgment.....	2.00	1.00	
Drawing order, per folio.....	.20	.20	
Attending to enter order.....	.50	.25	
Paid entering order, per folio.....		.10	.10
Paid order, not exceeding six folios, per folio.....		.20	.20
Paid additional fee, by statute.....		.20	
Attending for order.....	.50	.25	
Fee on order.....	1.00	.50	
Copy of order to serve, per folio.....	.10	.10	
Attending to serve.....	.50	.25	
Copy of order for taxing officer.....	.10	.10	
Drawing bill of costs, attending for appointment, and taxation, etc., as in Precedent No. 11, charge.....			

PRECEDENT NO. 35.

APPELLANT'S COSTS OF AN APPEAL FROM THE HIGH COURT OF
JUSTICE TO THE DIVISIONAL COURT AND COUNTY
COURT APPEAL IN TERM.

High Court. County Court.

Instructions.....	\$2.00	\$1.00	
Attending to bespeak and for copy of judgment for registrar.....	1.00	.50	
Paid for same, per folio.....		\$0.10	\$0.10
Drawing notice of motion, per folio.....	.20	.20	
Engrossing and copy to serve.....	.50	.25	
Attending to bespeak and for copy of evidence at trial.....	1.00	.50	
Paid for same, per folio.....		.06	.06
Attending to præcipe papers to Toronto, and paid....	.50	.30	.50
Paid postage.....			.20
Paid express (if necessary).....			
Letter to agents to set down motion.....	.50	.02	.25
Attending setting down motion.....	.50	.25	.02
Paid setting down.....		.50	.20
Paid each filing.....		.10	.10
Instructions for brief.....	2.00	.50	
Drawing brief (if five folios, or under).....	2.00	1.00	
Each additional folio.....	.10	.10	
Where counsel not solicitor, or solicitor's partner, charge.....			
Attending counsel with and for brief.....	1.00	.50	
Counsel fee when appeal argued.....	10.00	5.00	
To be increased in the discretion of the taxing officer in Toronto, but no more than two coun- sel fees to be allowed in any case. In County Court cases to be increased in the discretion of the judge to.....			10.00

FORMS OF BILLS OF COSTS.

329

Court.

High Court. County Court.

Fee after appeal argued.....	1.00	.50	
Attending to hear judgment (where judgment re- served).....	2.00	1.00	
Drawing order and engrossing, per folio.....	.30	.20	
If order is settled on appointment, charge.....			
Copy of minutes to serve, per folio.....	.10	.10	
Attending for appointment to settle.....	.50	.25	
Appointment copy and service.....	1.00	.50	
Attending settling order, per hour.....	1.00	.50	
To be increased in the taxing officer's discretion in important cases, and where solicitor attends personally to, not exceeding.....	5.00	2.50	
Attending to bespeak for order and to have entered.....	.50	.25	
Paid entering order, per folio.....		.10	.10
Paid for order not exceeding five folios, per folio..		.20	.20
Additional fee by statute in H. C. cases.....		.20	
Fee on order.....	1.00	.50	
Attending to serve (each attendance).....	.50	.25	
Drawing bill of costs, per folio (in C. C. cases to include copy for taxing officer and engrossing)	.20	.20	
Engrossing and copy for taxing officer.....	.10		
Copy to serve, per folio.....	.10	.10	
Attending for appointment to tax.....	.50	.25	
Appointment copy and service.....	1.00	.50	
Attending to serve.....	.50	.25	
Attending on taxation (in High Court cases, per hour).....	1.00	1.00	
Paid on taxation.....		.90	.80
Paid each filing.....		.10	.10
Attending for certificate (if necessary).....	.50	.25	
Attending to file certificate, and paid filing.....	.50	.10	.25
(If affidavits have been used on appeal, and order refers to them, make the necessary charge for preparing affidavits, filing and copies).....			.10

T OF

Court.

\$0.10

PRECEDENT NO. 36.

RESPONDENT'S COSTS OF OPPOSING AN APPEAL FROM THE
HIGH COURT TO THE DIVISIONAL COURT AND
COUNTY COURT APPEAL IN TERM.

High Court. County Court.

Instructions to oppose.....	\$ 2.00	\$1.00	
Attending to bespeak and for copy of judgment at trial.....	1.00	.50	
Paid for same.....			
Attending to bespeak and for copy evidence at trial.....	1.00	.50	
Paid for same.....			
Having received notice of motion, attending to search registrar's office to see if motion set down and paid.....	.50	\$.10	.25 \$.10
Instructions for brief.....	2.00	.50	
Drawing brief up to five folios.....	2.00	1.00	
Each folio, over five folios, in addition.....	.10	.10	

.06

.20

.02

.20

.10

High Court. County Court.

Where counsel is not the solicitor, or solicitor's partner, charge.....		
Attending counsel with and for brief.....	1.00	.50
Counsel fee on motion.....	10.00	5.00
To be increased in the discretion of the taxing officer in Toronto, but not more than two counsel fees to be allowed in any case.....		
In County Court cases to be increased in the discretion of the judge to.....		10.00
Fee after appeal, argued.....	1.00	.50
Attending to hear judgment (where judgment reserved).....	2.00	1.00
Fee after judgment.....	1.00	.50
Charge the remainder of the bill on model of Precedent No. 35, for order, settling order, bill of costs, etc., and taxation. (If respondent has prepared affidavits, and affidavits have been used on appeal, and they are referred to in the order, the charge for preparing same should be added).....		

PRECEDENT NO. 37.

COSTS OF AN APPELLANT ON AN APPEAL FROM A COUNTY COURT TO A DIVISIONAL COURT.

Instructions.....	\$ 2.00	
Attending County Court judge to have proceedings certified.....	1.00	
Attending to bespeak and for necessary copies of evidence required on appeal.....	1.00	
Paid per folio for copy of evidence.....		.7½
Instructions for reasons of appeal.....	1.00	
Drawing reasons of appeal, if five folios or under.....	2.00	
Where counsel is not solicitor or solicitor's partner, charge.....		
Attending counsel with and for to settle.....	1.00	
Counsel fee settling reasons for appeal.....	2.00	
To be increased in the discretion of the taxing officer in Toronto in special and important cases to not exceeding.....	5.00	
Attending to set down appeal and paid besides filings.....	.50	.50
Paid filings each.....		.10
Notice of hearing copy and service.....	1.00	
Counsel fee on argument in the discretion of the taxing officer at Toronto, not exceeding.....	25.00	
Fee after appeal argued.....	1.00	
Letter to client advising.....	.50	.02
Attending to hear judgment (where judgment reserved).....	2.00	
Fee after judgment delivered.....	1.00	
Letter to client advising.....	.50	.02
Drawing and engrossing order per folio.....	.30	
Where order settled on appointment to settle, charge, in addition.....		
Copy of minutes, per folio.....	.10	
Attending for appointment to settle judgment.....	.50	
Appointment and copy.....	.50	
Attending to serve.....	.50	
Attending settling order, per hour.....	1.00	
Where the solicitor attends personally in special cases, to be increased by the taxing officer to a sum not exceeding.....	5.00	

FORMS OF BILLS OF COSTS.

331

Court.

Attending to bespeak for order	.50	
Paid for order (not to exceed) six folios, per folio	.20	
Paid per folio by statute	.20	
Attending for order		
Fee on order	1.00	
Copy of order to serve, per folio	.10	
Attending to serve	.50	
Each additional attendance to serve	.50	
Each additional copy of order to serve, per folio	.10	
Copy of order for taxing officer, per folio	.10	
Drawing bill of costs and engrossing	.20	
Copy for taxing officer	.10	
Copy to serve (each) per folio	.10	
Attending for appointment to tax	.50	
Appointment copy and service	1.00	
Attending on taxation of costs of appeal, if taxation does not occupy more than one hour	1.00	
For each additional hour	1.00	
Attending for certificate (if necessary)	.50	
Attending to file certificate and paid	.50	.10

PRECEDENT NO. 38.

RESPONDENTS COSTS OF OPPOSING AN APPEAL FROM A COUNTY COURT TO A DIVISIONAL COURT.

fy

Instructions to oppose appeal	\$ 2.00	
Having been served with reasons of appeal and notice of setting down appeal		
Perusing reasons of appeal	1.00	
Letter to client advising	.50	.02
Attending to see if case set down for hearing	.50	
Paid search		.10
Drawing reasons against appeal and engrossing, per folio	.30	
Copy to serve, per folio	.10	
Attending to serve	.50	
If counsel not the solicitor or solicitor's partner, charge		
Attending counsel with and for brief	1.00	
Counsel fee on argument, in the discretion of the taxing officer in Toronto, not to exceed the sum of	25.00	
Fee after argument of appeal	1.00	
Letter to client advising	.50	.02
Attending to hear judgment (if judgment reserved)	2.00	
Letter to client advising	.50	.02
Fee after judgment	1.00	
Drawing and engrossing order, per folio	.30	
Where order is settled by appointment, charge		
Copy of minutes of order, per folio	.10	
Attending by appointment to settle order	.50	
Appointment and copy	.50	
Attending to serve	.50	
Each additional attendance	.50	
Attending settling order, per hour	1.00	
Where the solicitor attends personally, and in special important cases, the taxing officer has a discretion to increase the fee to a sum not exceeding	5.00	
Attending to bespeak and to have order entered	.50	
Paid entering order, per folio		.10
Paid on order up to six folios		.20

.74

.50

.10

.02

.02

Additional fee prescribed by statute		20
Attending for order.....	.50	
Copy of order to serve, per folio.....	.10	
Fee on order	1.00	
Drawing bill of costs and engrossing, per folio	.20	
Copy of bill of costs for taxing officer.....	.10	
Copy of bill of costs, to serve, per folio.....	.10	
Copy of order for taxing officer, per folio	.10	
Attending for appointment to tax costs	.50	
Appointment, copy and service.....	1.00	
If admission of service refused, charge.....		
Affidavit of service, including attending to swear, and paid.....	1.00	
Attending for certificate (if necessary)	.50	
Attending to file certificate, and paid	.50	10

PRECEDENT NO. 39.

COSTS OF AN APPEAL FROM THE HIGH COURT OF JUSTICE TO
THE COURT OF APPEAL.

Instructions	\$2.00	
Drawing notice of appeal, including engrossing, per folio.....	.20	
Copy to serve, each, per folio.....	.10	
Copy of notice of appeal, to file, per folio.....	.10	
Attending to file, and paid.....	.50	10
Attending to serve, each attendance	.50	
If respondent applies for security, for costs, or security for costs, required by the rules of practice, charge as in Precedent No. 45.		
Instructions for reasons of appeal	1.50	
Drawing reasons of appeal, not exceeding five folios.....	2.00	
For every folio in addition	.20	
Where outside counsel is employed, charge.....		
Attending counsel with, and for, to settle	1.00	
Counsel fee, settling	5.00	
To be increased in the discretion of the taxing officer in Toronto, in special and important cases, to a sum not exceeding	20.00	
Engrossing reasons for appeal, per folio.....	.20	
Copy of reasons for appeal, to serve, per folio.....	.10	
Attending to serve reasons of appeal, each attendance	.50	
Fee after reasons of appeal.....	1.00	
Attending to bespeak, and for copy of evidence.....	1.00	
Paid for same		
Attending to bespeak, and for copy of judgment at trial.....	1.00	
Paid for same		
All necessary copies for use of judges, per folio.....	.10	
Copy of reasons of appeal to file, per folio	.10	
Attending to file and paid	.50	10
All necessary copies of reasons of appeal for use of judges, per folio.....	.10	
Attending preparing		
Record and papers.....	.50	
Paid		.30
Paid postage or express.....		
Amount actually paid.....		
Attending setting down appeal	.50	
Paid setting down		4.00

20	Having been served with reasons against appeal.....	
	Fee perusing.....	1.00
	Where appeal books, not printed, charge.....	
	Instructions for brief.....	2.00
	Drawing brief up to five folios.....	2.00
	Every folio in addition.....	
	Where counsel or solicitor or solicitor's partner, charge.....	
	Attending counsel with and for brief.....	1.00
	If appeal books printed, charge.....	
	Drawing consent to print appeal books, per folio.....	.20
	Engrossing consent, per folio.....	.10
	Attending solicitor for respondent to sign consent.....	.50
	(Where order has been made for printing appeal books, charge, either costs of opposing application, or costs of supporting application, according to circumstances).	
10	All necessary matters for appeal book, not in the possession of appellant, per folio.....	.10
	Drawing statement of case for appeal book, per folio.....	.20
TO	Engrossing same.....	.10
	Drawing index for appeal book, per folio.....	.20
	Engrossing same, per folio.....	.10
	Where outside counsel employed, charge.....	
	Attending counsel settling case and for case.....	1.00
	Counsel fee settling case.....	5.00
10	In special and important cases to be increased in the discretion of the taxing officer in Toronto, to not exceeding.....	20.00
	Attending respondent's solicitor with case.....	.50
	Having received case from respondent's solicitor marked settled.....	
	Attending to have same printed.....	.50
	Revising proof, per folio.....	.10
	Attending printer for.....	.50
	Paid printer (any reasonable amount not exceeding, however, \$1.50 per page).....	
	Where appeal book type written, charge 30 cents per folio for one copy of appeal book, exclusive of evidence. See Rule 808.	
	Attending respondent's solicitor with appeal book.....	.50
	Attending registrar of Court of Appeal with appeal books.....	.50
	Where counsel, not solicitor, or solicitor's partner, charge.....	
	Attending counsel with and for appeal books.....	1.00
	Counsel fee, when appeal, argued, in the discretion of the tax- ing officer in Toronto.....	
	Fee after argument.....	
	Attending to hear judgment.....	2.00
	(If judgment reserved.).....	
	Fee after judgment.....	1.00
	Where certificate is settled by appointment, add the following charges:	
10	Drawing certificate, per folio.....	.20
	Engrossing certificate, per folio.....	.10
	Drawing minutes, per folio.....	.10
	Attending for appointment, to settle.....	.50
	Appointment and a copy.....	.50
30	Attending to serve.....	.50
	Attending on return of appointment, per hour.....	1.00
	In special and important cases, where the solicitor attends personally, to be increased in the discretion of the taxing officer, to a sum not exceeding.....	5.00
00	Attending to bespeak for certificate.....	.50

Paid each filing		.10
Fee on certificate of Court of Appeal.....	1.00	
Copy of certificate to serve, per folio.....	.10	
Attending to serve.....	.50	
Attending for certificate.....	.50	
Copy of certificate for taxing officer, per folio	.10	
All necessary letters during the progress of the appeal.....	.50	.02
(Not to exceed, however, \$5.00, see Tariff item, 131, Tariff A.)		
Drawing bill of costs, engrossing and copy for taxing officer ...	.30	
Each additional copy to serve, per folio	.10	
Attending for appointment to tax, and paid	.50	1.10
Appointment copy, and service.....	1.00	
Attending on taxation, per hour.....	1.00	
Attending for certificate (if necessary)	.50	
Attending to file certificate, and paid	.50	.10

PRECEDENT NO. 40.

COSTS OF OPPOSING AN APPEAL FROM THE HIGH COURT OF JUSTICE TO THE COURT OF APPEAL.

Instructions to oppose appeal.....	\$2.00	
Having been served with notice of appeal and reasons of appeal		
Fee perusing	1.00	
If security for costs required by the consolidated rules of practice, or if an application is made for security for costs, charge as in Precedent No. 46.		
If appeal books printed, charge.....		
Attending to consent to printing of appeal book, or costs of supporting, or opposing, application for printing appeal books	.50	
Instructions for reasons against appeal	1.50	
Drawing reasons against appeal up to five folios.....	2.00	
Each additional folio.....	.20	
Where outside counsel employed, charge.....		
Attending counsel with, and for, to settle.....	1.00	
Counsel fee, settling.....	5.00	
In special and important cases, to be increased in the discretion of the taxing officer in Toronto, to	20.00	
Engrossing reasons against appeal, per folio	.10	
Each necessary copy, to serve, per folio.....	.10	
Each necessary attendance, to serve	.50	
Fee after reasons against appeal.....	1.00	
Having been served with draft, appeal case (if outside counsel employed) charge attending counsel with, and for, to settle	1.00	
Counsel fee, settling.....	5.00	
In special and important cases, to be increased in the discretion of the taxing officer, to a sum not exceeding	20.00	
Attending counsel with appeal book.	.50	
Attending counsel for appeal book.....	.50	
Where appeal book not printed, charge.....		
Attending to bespeak, and for copy of judgment, and paid for same, per folio	1.00	.10
Attending to bespeak, and for copy of evidence at trial, and paid for same, per folio	1.00	.1½
Then charge, instructions for reasons against appeal, drawing same		
Counsel fee, settling, engrossing.....		
Reasons against appeal.....		

10	Copies of reasons against appeal, etc., as above, and instructions for brief	2.00	
	Drawing brief, if not more than five folios	2.00	
	Each additional folio	.10	
	Where outside counsel employed, charge	1.00	
02	Attending counsel with and for brief	1.00	
	Counsel fee on argument, in the discretion of the taxing officer at Toronto	1.00	
	Fee after appeal argued	1.00	
	Attending to hear judgment (if judgment is reserved)	2.00	
10	Each necessary letter during the progress of the appeal	.50	.02
	Not to exceed the sum of \$5.00 (See Item 131, Tariff A.)	1.00	
	Fee after judgment	1.00	
10	Where certificate is settled the following charges are taxable		
	Drawing certificate of result of appeal, and engrossing, per folio	.30	
	Copy of minutes to serve, per folio	.10	
	Attending for appointment to settle	.50	
OF	Appointment and copy	.50	
	Attending to serve (each necessary attendance)	.50	
	Each additional copy of appointment	.10	
	Attending on appointment, per hour	1.00	
	In special and important cases to be increased in the discretion of the taxing officer, to	5.00	
	Attending to bespeak and for certificate	.50	
	Attending for certificate	.50	
	Fee on certificate	1.00	
	Copy of certificate to serve (if demanded), per folio	.10	
	Copy of certificate for taxing officer, per folio	.10	
	Drawing bill of costs and engrossing, per folio	.20	
	Copy for taxing officer, per folio	.10	
	Copy to serve, each, per folio	.10	
	Attending for appointment to tax	.50	
	Appointment copy and service	1.00	
	Attending to serve	.50	
	Attending on taxation, per hour	1.00	
	Each necessary enlargement	.50	
	Each hour engaged, over one hour	1.00	
	Attending for certificate (if necessary)	.50	
	Attending to file certificate, and paid	.50	.10
	Paid taxation		1.10

PRECEDENT NO. 41.

COSTS OF A CHAMBER MOTION OF PARTY MOVING.

High Court. County Court.

	Instructions in the discretion of the taxing officer. \$ 2.00	\$ 1.00
10	Drawing affidavit in support of application and engrossing, per folio	.30
	Preparing each exhibit	.10
	Attending to swear to affidavit	.50
10	Paid oath	.20
	Paid marking each exhibit	.10
14	Attending to file affidavit	.50
	Paid filing affidavit	.10
	Notice of motion, engrossing and copy to serve, per folio	.30
	Each additional copy, per folio	.10

	High Court.	County Court.
Attending to serve, each attendance.....	.50	.25
Where notice of motion is served by the sheriff, charge for service, as in Precedent No. 1.....		
Having been served with demand for copy of affidavit, copy of affidavit to serve, per folio.....	.10	.10
Attending to have demand marked "satisfied," and to serve affidavit.....	.50	.25
Each necessary enlargement of motion.....	1.00	.50
In County Court cases, paid enlargement		.15
Demand for copy of affidavit, in reply and copy.....	.50	.25
Attending to serve.....	.50	.25
Having received affidavit, fee perusing, up to twenty folios.....	1.00	.50
Each folio over twenty.....	.05	
In no case to exceed the sum of.....	5.00	
Instructions for affidavit in reply, if special, in the discretion of the taxing officer.....	1.00	.50
Drawing and engrossing affidavits, per folio.....	.30	.30
Preparing each exhibit.....	.10	.10
Attending to swear.....	.50	.25
Paid oath.....	.20	.20
Paid marking each exhibit.....	.10	.10
Copy of affidavit to serve, per folio.....	.10	.10
Attending to serve.....	.50	.25
If parties examined on affidavits filed, charge for examination, as in Precedent No. 8 and Pre- cedent No. 9.....		
Counsel fee on motion.....	2.00	1.00
To be increased in the discretion of the taxing officer in cases in the High Court or Court of Appeal, to a sum not to exceed.....	5.00	
To be increased in the discretion of the Judge in County Court cases to a sum not exceeding.....		5.00
Subject to further increase in the discretion of the taxing officer at Toronto, provided that the Master in Chambers may in cases before him recommend a fee.....		
Where judgment is reserved, charge.....		
Attending to hear judgment.....	1.00	.50
Drawing order, per folio.....	.20	.20
If order settled, charge.....		
Copy of minutes to serve, per folio.....	.10	.10
Notice of settling and copy.....	.50	.25
Attending to serve.....	.50	.25
Attending on settlement of order, per hour.....	1.00	.50
In special and important cases to be increased in the discretion of the taxing officer, when the solicitor attends personally, to a sum not exceeding	5.00	2.50
Attending to issue order	.50	
Paid for order	.50	.50
Attending to enter order	.50	.25
Paid entry per folio.....	.10	.10
Copy of order to serve, per folio.....	.10	.10
Attending to serve.....	.50	.25
Fee on order.....	1.00	.50
Copy of order for taxing officer, per folio.....	.10	.10
Charge, bill of costs, attending on taxation, etc., as in Precedent No. 11.....		

PRECEDENT NO. 42.

COSTS OF A CHAMBER MOTION OF PARTY OPPOSING.

High Court. County Court.

Instructions to oppose in the discretion of the taxing officer	\$2.00	\$1.00
Demand for copy of affidavit to be used on a motion and copy	.50	.25
Attending to serve	.50	.25
Having received affidavits, fee perusing up to twenty folios	1.00	.50
For each folio over twenty	.05	
Not to exceed in all	5.00	
Instructions for affidavit in reply, if special	1.00	.50
Drawing affidavits in reply and engrossing, per folio	.30	.30
Preparing each exhibit	.10	.10
Attending to swear to affidavit	.50	.25
Paid oath	.20	.20
Paid marking each exhibit	.10	.10
Attending to file affidavits	.50	.25
Paid filing	.10	.10
Having received demand for copy of affidavit, copy of affidavit to serve, per folio	.10	.10
Attending on each necessary enlargement of motion	1.00	.50
Paid enlargement		.15
Having been served with affidavits, in answer, fee perusing, each folio over twenty (counting folios in affidavits already perused)	.05	
Not to exceed the sum of	5.00	
If parties examined on affidavits charge for exami- nation as in Precedents No. 8 and 9	2.00	1.00
Counsel fee on motion		
To be increased in the discretion of the taxing officer in cases in the High Court or Court of Appeal, to a sum not to exceed	5.00	
To be increased in the discretion of the judge, in County Court cases, to a sum not exceeding		5.00
Subject to further increase in the discretion of the taxing officer at Toronto, provided that the Master in Chambers may in cases before him recommend a fee		
Where judgment is reserved, charge		
Attending to hear judgment	1.00	.50
Drawing order, per folio	.20	.20
If order settled, charge		
Copy of minutes to serve, per folio	.10	.10
Notice of settling and copy	.50	.25
Attending to serve	.50	.25
Attending on settlement of order, per hour	1.00	.50
In special and important cases to be increased in the discretion of the taxing officer when the solicitor attends personally, to a sum not ex- ceeding	5.00	2.50
Attending to issue order	.50	
Paid for order	.50	.50
Attending to enter order	.50	.25
Paid entry, per folio	.10	.10

	High Court. County Court.	
Copy of order to serve, per folio.....	.10	.10
Attending to serve.....	.50	.25
Fee on order.....	1.00	.50
Copy of order for taxing officer, per folio.....	.10	.10
Charge bill of costs attending on taxation, etc., as in Precedent No. 11.....		

PRECEDENT NO. 43.

COSTS OF A COURT MOTION OF PARTY MOVING.

	High Court. County Court.	
Instruction for motion in the discretion of the tax- ing officer.....	\$2.00	\$1.00
Drawing affidavit and engrossing, per folio.....	.30	.30
Attending to swear to affidavit.....	.50	.25
Paid oath.....	.20	.20
Preparing each exhibit.....	.10	.10
Paid marking each exhibit.....	.10	.10
Attending to file affidavit.....	.50	.25
Paid filing.....	.10	.10
Notice of motion, engrossing and copy, per folio..	.30	.15
Each additional copy, per folio.....	.10	.10
Attending to serve notice of motion, each attend- ance.....	.50	.25
If notice of motion is served by sheriff, charge sheriff's fees as in Precedent No. 1.....		
Attending to set down motion.....	.50	.25
Paid setting down motion.....	.50	.20
Paid each filing in addition.....	.10	.10
Having been served with demand for copy of affi- davit, copy of affidavit to serve.....	.10	.10
Attending to serve and have demand marked "satisfied".....	.50	.25
Demand for affidavit in reply and copy.....	.50	.25
Attending to serve.....	.50	.25
Having received affidavit in reply, fee perusing, up to twenty folios.....	1.00	.50
Each additional folio above twenty.....	.05	
Not to exceed.....	5.00	
Instructions for brief.....	2.00	.50
Drawing brief up to five folios.....	2.00	1.00
Each additional folio above five.....	.10	.10
Where counsel is not solicitor nor solicitor's part- ner, charge.....		
Attending council with and for brief.....	1.00	.50
Each proper and necessary enlargement of motion Instructions for affidavit in reply, if special, in the discretion of the taxing officer.....	1.00	.50
Drawing affidavit and engrossing, per folio.....	.30	.30
Attending to swear.....	.50	.25
Paid oath.....	.20	.20
Preparing each exhibit.....	.10	.10
Paid marking each exhibit.....	.10	.10
Having been served with demand for copy of affidavit, in reply, copy to serve, per folio.....	.10	.10
Attending to serve and have demand marked "satisfied".....	.50	.25

Court.

High Court. County Court.

Attending to file affidavit in reply.....	.50	.25
Paid filing.....	.10	.10
Where the witnesses are examined upon the affidavits, charge for examination as in precedent numbers 8 and 9.....		
Counsel fee on argument of motion.....	10.00	5.00
In the High Court and Court of Appeal to be increased in the discretion of the taxing officer in Toronto, but not more than two counsel shall be allowed in any case.....		
In County Court cases to be increased in the discretion of the judge to.....		10.00
Where judgment reserved, charge.....		
Attending to hear judgment.....	2.00	1.00
Drawing order, per folio.....	.20	.20
If order settled charge.....		
Copy of minutes to serve, per folio.....	.10	.10
Attending for appointment to settle copy and service.....	1.50	.75
Attending on settlement of order, each hour.....	1.00	.50
To be increased in the discretion of the taxing officer, where the solicitor attends personally, in special and important cases, to a sum not exceeding.....	5.00	2.50
Attending to bespeak and for order.....	1.00	.50
Copy of order not exceeding 6 folios, each folio....	.20	.20
Additional fee by statute.....	.20	
Attending to have order entered.....	.50	.25
Paid entering order, per folio.....	.10	.10
Copy of order to serve, per folio.....	.10	.10
Attending to serve.....	.50	.25
Fee on order.....	1.00	.50
Copy of order for taxing officer, if necessary, per folio.....	.10	.10
Bill of costs, charge.....		
Attending on taxation, etc., as on model of Precedent No. 11.....		

Court.

PRECEDENT NO. 44.

COSTS OF COURT MOTION OF PARTY OPPOSING.

High Court. County Court.

Instructions to oppose in the discretion of the taxing officer.....	\$ 2.00	\$ 1.00
Demand for copy of affidavit and copy.....	.50	.25
Attending to serve.....	.50	.25
Having received affidavits, perusing same up to twenty folios.....	1.00	.50
Each additional folio over twenty.....	.05	
Not to exceed.....	5.00	
Instructions for affidavit in reply, if special, in the discretion of the taxing officer.....	1.00	.50
Drawing affidavits in reply and engrossing, per folio.....	.30	.30
Attending to swear to affidavit.....	.50	.25
Paid oath.....	.20	.20
Preparing each exhibit.....	.10	.10
Paid marking each exhibit.....	.10	.10
Having been served with demand for copy of affidavit, copy to serve, per folio.....	.10	.10

	High Court.	County Court.
Attending to serve and have demand marked "satisfied"	.50	.25
Instructions for brief.....	2.00	.50
Drawing brief, up to five folios.....	2.00	1.00
For each folio over five in addition, per folio.....	.10	.10
Where counsel is not the solicitor, nor solicitor's partner, charge.....		
Attending counsel with and for brief.....	1.00	.50
Each necessary enlargement of motion.....	5.00	2.00
Attending to file affidavit in reply.....	.50	.25
Paid filing.....	.10	.10
If parties examined on affidavits, filed, charge for examination as in Precedents No. 8 and 9.....		
Counsel fee on motion	2.00	1.00
To be increased in the discretion of the taxing officer in cases in the High Court or Court of Appeal to a sum not to exceed	5.00	
To be increased in the discretion of the Judge in County Court cases to a sum not exceeding.....		5.00
Subject to further increase in the discretion of the taxing officer at Toronto, provided that the Master in Chambers may in cases before him recommend a fee		
Where judgment is reserved, charge		
Attending to hear judgment.....	1.00	.50
Drawing order, per folio	.20	.20
If order settled, charge		
Copy of minutes to serve, per folio.....	.10	.10
Notice of settling and copy.....	.50	.25
Attending to serve.....	.50	.25
Attending on settlement of order, per hour.....	1.00	.50
In special and important cases to be increased in the discretion of the taxing officer, when the solicitor attends personally, to a sum not exceeding	5.00	2.50
Attending to issue order	.50	
Paid for order	.50	.50
Attending to enter order	.50	.25
Paid entry, per folio	.10	.10
Copy of order to serve, per folio.....	.10	.10
Attending to serve.....	.50	.25
Fee on order	1.00	.50
Copy of order for taxing officer, per folio	.10	.10
Charge bill of costs, attending on taxation, etc., as in Precedent No. 11.....		

PRECEDENT NO. 45.

PLAINTIFF'S COSTS OF OPPOSING DEFENDANT'S APPLICATION FOR SECURITY FOR COSTS.

	High Court.	County Court.
Instructions to oppose motion for security for costs in the discretion of the taxing officer.....	\$ 2.00	\$ 1.00
Demand for copy of affidavit in support of application and copy	.50	.25
Attending to serve.....	.50	.25
Having received copy of affidavits, fee perusing up to 20 folios	1.00	.50

Court.

High Court. County Court.

Each folio over 20, per folio.....	.05	
Not to exceed	5.00	
Drawing affidavit in reply and engrossing, per folio	.30	.30
Attending to swear	.50	.25
Paid oath	.20	.20
Preparing each exhibit	.10	.10
Paid marking each exhibit	.10	.10
Having been served with demand for copy of affidavit		
Copy of affidavit to serve, per folio	.10	.10
Attending to serve affidavit and have demand marked "satisfied"	.50	.25
Each necessary enlargement of motion.....	1.00	.50
Attending to file affidavit in reply	.50	.25
Paid filing.....	.10	.10
If witnesses cross-examined upon their affidavits, charge for examination, on model of Precedents No. 8 and 9.....		
Counsel fee on motion	2.00	1.00
To be increased in the discretion of the taxing officer in cases in the High Court or Court of Appeal, to a sum not exceeding	5.00	
To be increased in the discretion of the judge in County Court cases to a sum not exceeding.....		5.00
Subject to further increase in the discretion of the taxing officer at Toronto.....		
Provided that the Master in Chambers may, in cases before him, recommend a fee.....		
Where judgment is reserved, charge.....		
Attending to hear judgment.....	1.00	.50
Attending Chambers, settling order, per hour	1.00	.50
Attending on plaintiff, in reference to security, and received cheque for same.....	.50	.25
Attending for direction to bank, to receive security	.50	.25
Paid for direction.....	.30	.30
Attending bank to pay money in	.50	.25
Notice of payment and copy.....	.50	.25
Attending to serve	.50	.25
Where bond given, charge		
Drawing bond, including affidavits of justification, affidavits of execution, and all necessary attendance	5.00	3.00
Attending to file bond	.50	.25
Paid filing bond.....	.10	.10
Paid filing each affidavit	.10	.10
Notice of filing and copy	.50	.25
Attending to serve.....	.50	.25

ATION

PRECEDENT NO. 46.

Court.

COSTS OF AN APPLICATION BY DEFENDANT FOR SECURITY FOR COSTS.

High Court. County Court.

Instructions in the discretion of the taxing officer..	\$2.00	\$1.00
Drawing and engrossing affidavit, per folio.....	.30	.30
Attending to swear	.50	.25
Paid oath.....	.20	.20

	High Court. County Court.	
Preparing each exhibit.....	.10	.10
Paid marking each exhibit.....	.10	.10
Attending to file affidavit.....	.50	.25
Paid filing.....	.10	.10
Notice of motion, engrossing and copy, per folio....	.30	.15
Attending to serve.....	.50	.25
Having been served with demand for copy of affidavit, copy of affidavit to serve, per folio.....	.10	.10
Attending to serve affidavit and have demand marked "satisfied".....	.50	.25
Demand and copy for copies of affidavits in answer.....	.50	.25
Attending to serve.....	.50	.25
Having received affidavits, fee perusing up to twenty folios.....	1.00	.50
Every folio over twenty, per folio.....	.05	
Not to exceed in all.....	5.00	
Instructions for affidavit in reply in the discretion of the taxing officer.....	1.00	.50
Drawing and engrossing affidavit, per folio.....	.30	.30
Attending to swear.....	.50	.25
Paid oath.....	.20	.20
Paid marking each exhibit.....	.10	.10
Copy of affidavit to serve.....	.10	.10
Attending to serve.....	.50	.25
Attending to file affidavit in reply.....	.50	.25
Paid filing.....	.10	.10
Where parties are examined on affidavits filed, charge.....		
For examination as on model of Preeedents No. 8 and 9.....		
Counsel fee on argument.....	2.00	1.00
To be increased in the discretion of the taxing officer in cases in the High Court or Court of Appeal to a sum not exceeding.....	5.00	
To be increased in the discretion of the judge in County Court cases to a sum not exceeding.....		5.00
Subject to further increase in the discretion of the taxing officer at Toronto provided that the Master in Chambers may in cases before him recommend a fee.....		
Where judgment reserved, charge.....		
Attending to hear judgment.....	1.00	.50
Drawing order, per folio.....	.30	.20
If order settled, charge, in addition, copy of minutes to serve, per folio.....	.10	.10
Notice of settling and copy.....	.50	.25
Attending to serve.....	.50	.25
Attending on settlement, per hour.....	1.00	.50
Attending to issue order.....	.50	.25
Fee on order.....	1.00	.50
Paid for order.....	.50	.50
Attending to serve order.....	.50	.25
Having been served with notice of payment of money into court.....		
Attending to search if money paid into court.....	.50	.25
Paid search.....	.10	.10
Where plaintiff, instead of paying money into court, furnished a bond, charge.....		

High Court. County Court.

Court.

Having been served with notice of filing bond,		
attending to search bond.....	.50	.25
Paid search.....	.10	.10

PRECEDENT NO. 47.

BILL OF COSTS OF OBTAINING ORDER TO TAX SOLICITOR'S BILL
OF COSTS AND COSTS OF THE REFERENCE.

High Court. County Court.

Instructions to apply for order in the discretion of the taxing officer.....	\$ 2.00	
If it is necessary to make an application to cham- bers, charge on model of Precedent No. 41.....		
Where order can be issued on præcipe, charge.....		
Attending for order.....	.50	
Paid for order.....		\$.60
Fee on order.....	1.00	
Copy to serve, per folio.....	.10	
Copy of order for taxing officer, per folio.....	.10	
Attending for appointment to proceed with reference.....	.50	
Paid for appointment.....		.50
Paid each folio in addition.....		.10
Appointment copy and service.....	1.00	
Attending on reference, per hour.....	1.00	
Paid on reference, each hour.....		1.00
Paid each oath.....		.20
Paid each filing.....		.10
Drawing bill of costs and engrossing, and copy for taxing officer, per folio.....	.30	
Copy of bill of costs to serve, per folio.....	.10	
Instructions for affidavit of disbursements of special use in the discretion of the taxing officer.....	1.00	
Drawing and engrossing affidavit of disbursements, per folio.....	.30	
Attending to swear.....	.50	
Paid oath.....		.20
Copy of affidavit of disbursements to serve, per folio.....	.10	
Attending to serve.....	.50	
Attending on taxation, per hour.....	1.00	
Paid on taxation.....		.90
Paid filings each.....		.10
Attending for reports.....	.50	
Paid for report.....		1.00
Attending to file report.....	.50	
Paid filing report.....		.10



PART III.

MISCELLANEOUS TARIFFS.

TARIFF OF FEES TO BE PAID TO THE REGISTRAR OF THE SUPREME COURT OF CANADA.

On entering every appeal.....	\$ 10.00
On entering every judgment, decree or order in the nature of a final judgment.....	10.00
On entering every other judgment, decree or order.....	2.00
On filing every document or paper.....	.10
Every search.....	.25
Every appointment.....	.50
Every enlargement of any appointment, or on application in Chambers	.50
The foregoing items are not to apply to criminal appeals in matters of habeas corpus arising out of a criminal charge.	
On sealing every writ (besides filings).....	2.00
Amending every document, writ or other paper.....	.50
Taxing every bill of costs (besides filings).....	1.00
Every allocatur	1.00
Every fiat	.50
Every reference, inquiry, examination or other special matter referred to the registrar, for every meeting not exceeding one hour	1.00
Every additional hour or less.....	1.00
For every report made by the registrar upon such reference, etc....	1.00
Upon payment of money into court, or deposited with the registrar, every sum under \$200.00.....	1.00
A percentage on money over \$200.00 paid in at the rate of one per cent.....	.25
Receipt for money.....	.25
Comparing, examining and certifying transcript record on appeal to the Privy Council.....	10.00
Comparing any other document, paper or proceeding with the original on file or deposit in the registrar's office, per folio.....	.24
Every other certificate required from registrar.....	1.00
Copy of any document, paper or proceeding or any abstract therefrom, per folio.....	.10
Every affidavit, affirmation or oath administered by registrar.....	.25
Every commission or order for examination of witnesses.....	1.50

TARIFF OF FEES TO BE TAXED BETWEEN PARTY AND PARTY IN THE SUPREME COURT OF CANADA.

On special case required by section 24 (now section 44) of the Supreme and Exchequer Courts Act, when prepared and agreed upon by the parties to the cause, including attendance on the judge to settle the same, if necessary, to each party.....	\$ 25.00
Notice of appeal.....	4.00
On consent to appeal directly to the Supreme Court from the court of original jurisdiction.....	3.00

Notion of giving security.....	2.00
Attendance on giving security.....	3.00
On motion to quash proceedings under section 37 (now section 59) according to the discretion of the registrar to	25.00
Subject to be increased by order of the court or of a judge.....	
On <i>factums</i> in the discretion of the registrar to	50.00
For engrossing for printer copy of case as settled when such engrossed copy is necessarily and properly required, per folio, of 100 words.....	.10
For correcting and superintending printing, per 100 words.....	.05
On dismissal of appeal if case be not proceeded with, in the discretion of the registrar to	25.00
Subject to be increased by order of the court or a judge.....	
Suggestions under sections 42, 43 and 44 (now 54, 55 and 56), including copy and service.....	2.50
Notice of intention to continue proceedings under section 45 (now section 57).....	4.00
On depositing money under section 48 (now section 51 of the Dominion Controverted Elections Act) in controverted election cases	2.50
Notice of appeal in election cases limiting the appeal to special and defined questions under section 48 (now section 51 of the Dominion Controverted Elections Act).....	6.00
Allowance to cover all fees to attorney and counsel for the hearing of the appeal, in the discretion of the registrar to	200.00
Subject to the increase by order of the court or of a judge	
On printing the <i>factums</i> , the same fees as in printing the case.....	
Besides the registrar's fees, reasonable charges for postages and disbursements necessarily incurred in proceedings in appeal will be taxed by the taxing officer.....	
Allowance to the duly entered agent in any appeal, in the discretion of the registrar.....	20.00

SUPREME COURT IN CANADA.

SHERIFFS AND CORONERS SHALL BE ENTITLED TO THE FEES AND POUNDAGE PRESCRIBED BY THE SCHEDULE FOLLOWING.

SCHEDULE OF FEES AND POUNDAGE.

Every warrant to execute any process directed to the sheriff, when given to the bailiff.....	\$ 0.75
Service of process each defendant (no fee for affidavit of services in such cases to be allowed unless service made or recognized by the sheriff)	1.50
Serving other papers beside mileage	.75
For each additional party served	.50
Receiving, filing, entering and endorsing all writs, notices or other papers, each	.25
Return of all process and writs (except subpoena), notices or other papers	.50
Every search, not being a party to a cause, or his attorney	.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)	1.00
Poundage on executions and on writs in the nature of executions where the sum made shall not exceed \$1,000, six per cent.....	

2.00	When the sum is over \$1,000 and under \$4,000, three per cent. ;	
3.00	when the sum is \$4,000 and over, one and a half per cent., in	
	addition to the poundage allowed up to \$1,000, exclusive of	
25.00	mileage for going to seize and sell; and except all disburse-	
	ments necessarily incurred in the care and removal of property.	
50.00	Schedule taken on execution or other process, including copy to	
	defendant, not exceeding five folios.....	1.00
	Each folio above five.....	.10
.10	Drawing advertisements when required by law to be published in	
.05	the <i>Official Gazette</i> or other newspapers, or to be posted up in	
	the Court House, or other place, and transmitting same in each	
25.00	suit.....	1.50
	Each necessary notice of sale of goods, in each suit.....	.75
	Every notice of postponement of sale, in each suit.....	.25
2.50	The sum actually disbursed for advertisements required by law to	
	be inserted in the <i>Official Gazette</i> or other newspaper.....	
4.00	Bringing up prisoner on attachment or habeas corpus, besides	
	travelling expenses actually disbursed, per diem.....	6.00
2.50	Actual and necessary mileage from the court house to the place	
	where service of any process, paper or proceeding is made, per	
	mile.....	.13
6.00	Removing or retaining property, reasonable and necessary dis-	
	bursements and allowances to be made by the registrar.....	
100.00	Drawing bond to secure goods seized, if prepared by sheriff.....	1.50
	Every letter written (including copy) required by party or his	
	attorney respecting writs or process, when postage prepaid.....	.50
	Drawing every affidavit when necessary and prepared by sheriff.....	.25
	For services not hereinbefore provided for, the registrar may tax	
	and allow such fees as in his discretion may be reasonable.....	

SURROGATE COURT TARIFFS.

(R.S.O. 1897, CHAPTER 59.)

I.

REGISTRAR'S FEES—(NON-CONTENTIOUS BUSINESS).

The following shall be the tariff of fees to be taken by the registrars of the Surrogate Court for duties and services in respect of non-contentious business in the said court:

0.75	1. For services rendered under Sections 67 and 68 of the Act (see Rule 40) where the value of the property does not exceed \$400..	\$1.50
	2. Receiving and examining papers and entering application.....	1.00
1.50	3. Every necessary notice to Surrogate clerk.....	.25
.75	4. Receiving and entering certificate.....	.25
.50	5. Recording every bond with affidavits of justification and execution.....	1.00
.25	6. (a) On every grant of letters probate or letters of administration where the property devolving is under \$1,000.....	1.00
	(b) \$1,000 and under \$4,000.....	2.00
.50	(c) \$4,000 and under \$10,000.....	3.00
.30	(d) \$10,000 and under \$20,000.....	4.00
	(e) \$20,000 and upwards.....	5.00
1.00	7. Submitting papers with registrar's report thereon to judge to lead grant.....	.50
	8. Recording grant or other instrument under Rule 46, or letters of guardianship, per folio.....	.10

9. For preparing probate or letters of administration or of guardianship issued under seal of the court, each instrument...	.75
10. Ditto—If grant is special	1.00
11. Transcript of will, per folio	.10
12. Certified copy of will in addition, per folio	.10
13. Drawing special orders or other papers directed by judge, per folio	.10
14. Taking every affidavit or administering oath to a witness	.20
15. Attending and entering every order or minute	.50
16. Every summons or order, and every instrument or other process under seal, not otherwise provided for, if prepared by the registrar, per folio, including fee for sealing	.20
17. For looking up original will or instrument and inspection, or for general search into proceedings	.30
18. Every other search	.20
19. Every necessary certificate granted by registrar	.50
20. Exemplification under seal, if exceeding five folios, per folio on the excess	.10
21. For depositing every will of a living person for safe custody, including a deposit receipt	.50
22. Issuing every subpoena	.50
23. Writing every necessary letter	.25
24. Filing every necessary paper	.10
25. Attending audit, including filing necessary papers thereat	.50
26. For taxing costs and granting certificate	.50
27. Receiving, entering and filing caveat	.50
28. Warning to caveat and entering the same	.30
29. Postage and stamps, and all other necessary disbursements to be added in all cases. (No fee allowed for filing papers in non-contentious business before probate or letters granted.) On proof of will in Solemn Form, and in proceedings for revoking probate, or letters of administration, or for the removal of a guardian.	
1. If the proceedings are disputed or contentious the same fees may be charged by the registrar as in contentious proceedings.	
2. If the proceedings are undisputed the same charges may be made by him as in non-contentious proceedings.	

REGISTRAR'S FEES (CONTENTIOUS BUSINESS).

1. Receiving, entering and filing caveat, and transmitting notice thereof to Surrogate clerk	\$0.75
2. Warning to caveat and entering same	.30
3. Receiving, entering and filing bond on appeal	.25
4. Searching for, making up and transmitting papers to Court of Appeal or High Court of Justice	.50
5. Every certificate for which no other fee is payable	.50
6. On every citation, summons or judge's order	.50
7. Search in registrar's books or files	.20
8. Looking up original will or instrument and inspection, or for general search into proceedings	.30
9. Filing every necessary paper	.10
10. Filing and entering every paper required to be minuted	.10
11. Entering every record or issue deposited for trial	.50
12. Every subpoena	.50
13. Administering oath or taking an affidavit	.20
14. Entering decree or order in pursuance of judgment, if under five folios	.50
15. If over five folios, per folio	.10

16. Entering every order or decree requiring to be entered in the court book not otherwise specified, per folio.....	.10
17. Issuing every writ under seal of the court except subpoena.....	.50
18. For every office copy or extract of a minute, order, decree, or other document filed or deposited in the office of the registrar, per folio.....	.10
19. For the seal, in addition to the fee, for the copy, and collating if required.....	.25
20. Every necessary letter.....	.25
21. Taxing every bill of costs and granting certificate.....	.80

DISBURSEMENTS.

22. All outlays for postage and stamps as disbursed to be added in all cases.
23. After contentious proceedings are closed and a decree for probate granted, or letters of administration have been decreed to either party, the registrar, in addition to the foregoing fees, shall be entitled to receive for business done the like fees as in non-contentious cases.
- On proof of will in solemn form and in proceedings for revoking probate, or letters of administration or for the removal of a guardian.
1. If the proceedings are disputed or contentious, the same fees may be charged by the registrar as in contentious proceedings.
 2. If the proceedings are undisputed, the same fees may be charged by him as in non-contentious proceedings.

FEES AND COSTS TO SOLICITORS AND COUNSEL.

The following shall be the tariff of fees and costs to be allowed in respect of proceedings in the Surrogate Courts in non-contentious cases to solicitors and counsel practising therein, viz.:

1. Drawing all necessary papers and proofs to lead, grant and obtaining order for probate, or letters of administration, in ordinary cases and taking out same.
 - (a) When the value of the property devolving is under \$1,000..... 6.00
 - (b) \$1,000 and under \$4,000..... 8.00
 - (c) \$4,000 and under \$10,000..... 12.00
 - (d) \$10,000 and under \$20,000..... 20.00
 - (e) \$20,000 and upwards..... 30.00
2. In cases of temporary administration, or administration granted pending any suit touching the validity of a will, or for obtaining, recalling or revoking any probate or grant of administration (May be increased, in the discretion of a judge, in cases of a special or important nature, to a sum not exceeding \$20.00.) 10.00
3. For obtaining letters of guardianship a fee of ten dollars (\$10.00) in addition to all necessary disbursements may be allowed, to be increased in the discretion of the judge, in cases of a special or important nature, to a sum not exceeding twenty dollars (\$20.00).

AUDIT AND PASSING ACCOUNTS OF EXECUTOR OR ADMINISTRATOR.

Where the inventory and accounts are brought in voluntarily and the next of kin or legatees, or devisees, or creditors do not appear, or appearing, there are no contentious proceedings or dispute about accounts.

4. Taking instructions..... 2.00

5. Preparing and bringing in accounts, if less than ten folios.....	3.00
6. If exceeding ten folios, per folio above ten	.20
7. Each necessary copy, per folio.....	.10
8. Affidavit verifying same	1.00
9. Attending to get sworn to.....	.50
10. Attending to file same and petition.....	.25
11. Petition and taking out appointment for consideration thereof..	2.00
12. Each necessary copy of petition and of appointment, per folio..	.10
13. Attending to serve such persons as the judge shall direct, each	.25
14. Affidavit of service, including attendance and paid commissioner	.50
15. Attending the audit, and exhibiting accounts and vouchers, and numbering same.....	5.00
16. If engaged more than two hours, for each subsequent hour necessarily engaged	2.00
17. Drawing up order for allowance to executor or administrator, and order for the passing of the accounts and engrossing including copies	1.00
18. Bill of costs and copy	.50
19. Attending taxation.....	.50
Where the accounts are brought in by citation or judge's order, and the proceedings are compulsory, or contentious, or where there are disputed accounts.	
20. For citation or order and serving same, and subsequent proceedings taken thereupon, by the solicitor and counsel, where counsel properly attend, the same fees may be charged and allowed in taxation in all respects as in cases of contentious proceedings	
21. To the solicitor of the executor or administrator cited, and to his counsel, where counsel properly attend, the same fees may be charged and allowed in taxation as in the case of contentious proceedings	
22. For preparing accounts and bringing in the same and all subsequent proceedings up to passing accounts and order granting allowance to executor or administrator (when taken or made) the same fees may be charged and allowed in taxation as the foregoing items, 4 to 19 inclusive, respectively, when applicable	
23. For taking out subpoena and making copies, and getting the same served (when necessary) the same fees may be charged and allowed at taxation as for similar services rendered in contentious proceedings.....	
For proof of will in solemn form and attending the same on behalf of those interested, or cited to appear; in proceedings for revoking probate, or letters of administration or for the removal of a guardian; and for intervening on behalf of an heir-at-law or other interested party.	
24. If the proceedings are disputed, the same or similar fees and costs may be charged and allowed on taxation as in contentious cases according to their special importance.	
For allowance to sheriffs and witnesses and other disbursements, see post.	

IN CONTENTIOUS BUSINESS.

The following shall be the tariff of fees and costs to be allowed in respect of proceedings in the Surrogate Courts in contentious cases to solicitors and counsel practising therein, viz. :—

INSTRUCTIONS.

1. For caveat, or warning of caveat, for revoking probate, or letters of administration, or for the removal of a guardian \$ 3.00

MISCELLANEOUS TARIFFS.

351

3.00	2. For new letters of guardianship.....	1.00
.20	3. For proofs of will in solemn form.....	1.00
.10	4. For statement of claim or other pleading.....	1.00
1.00	5. For citation, summons, or judge's order.....	1.00
.50	6. For interrogatories.....	1.00
.25	7. For special affidavits, in discretion of judge.....	.75
2.00	8. For inventories or bringing in accounts.....	1.00
.10	9. To defend suit, or to appear on behalf of any interested party..	2.00
.25	10. For brief, or case for hearing.....	1.00
.50		

DRAWING INSTRUMENTS, INTERROGATORIES, ETC.

5.00	11. Preparing caveat, or warning to caveat, and attending and entering either.....	\$ 1.00
2.00	12. Interrogatories, per folio.....	.20
	13. Renunciation of probate, attending and filing.....	.75
1.00	14. Any instrument or necessary paper, for which a fee is not otherwise allowed, per folio.....	.20
.50	15. Preparing every citation, summons or order, including præcipe and attendance, if drafted by solicitor.....	1.00
.50	16. Preparing and entering appearance to citation or to the warning of caveat.....	.50
	17. Other common appearance, and filing when necessary.....	.25
	18. Drawing and engrossing statement of claim or other pleading, ten folios or under.....	2.00
	19. If exceeding ten folios, for every additional folio.....	.20

ATTENDANCES.

20. Every special attendance in Chambers in the course of a cause..	\$ 1.00
To be increased in the discretion of the judge, not to exceed	3.00
21. Common and necessary attendances when not included in some other provision or fee	.25

NOTICES.

22. All necessary notices, if five folios, or under, inclusive of copy..	\$.50
23. If necessarily exceeding five folios, for additional folio.....	.10

DECREES.

24. Drawing decree or order for probate, or grant of letters of administration, or of guardianship, or for recalling or revoking probate, or grant of letters, or for removal of a guardian or other special decree or order, if prepared by the solicitor, per folio	.20
---	-----

DRAWING AFFIDAVITS, ETC.

25. Of service or other common affidavit, including attendance and paid commissioner	\$.75
26. Necessary special affidavits, not exceeding five folios	1.00
27. If necessarily above five folios, per folio	.20
28. For copy of caveat, warning, citation, statement of claim, or other pleading or necessary paper or document, when not otherwise provided for, per folio.....	.10
29. Fee on every subpoena.....	.75
30. For every copy of subpoena.....	.20
31. Drawing issue or copy of pleadings, if ten folios or under.....	1.00
32. If exceeding ten folios, per folio.....	.10

33. For perusing testamentary papers or other documents including attendance when necessary, in the opinion of the registrar, per folio 3 cents, not to exceed..... 1.00
34. Fee on every decree, order or judgment signed by the judge50

COUNSEL FEES.

35. On motion of course, or motion for order nisi, or motion to make absolute, in matters not special..... 1.00
36. On special motion and on special application to the court or judge (only one counsel fee to be taxed)..... 3.00
To be increased in the discretion of the judge to a sum not to exceed 6.00
37. On argument in supporting or opposing application to the court or a judge, argument of demurrer or special case..... 5.00
To be increased in the discretion of the judge to a sum not exceeding 10.00
38. Fee with brief at trial..... 10.00
To be increased by the judge at his discretion in cases of special or important nature, and on notice to the opposite party, to a sum not exceeding \$25 (no charge to be made by either party in connection with such application).....
39. Fee to counsel (when counsel attend) on argument or on examination in chambers, where, in the opinion of the judge, the attendance of counsel is required..... 2.00
To be increased (in the discretion of the judge) to a sum not exceeding 5.00
40. On settling pleadings, interrogatories, special case or petition, or advising on evidence, in the discretion of the judge, not exceeding 3.00

JUDGMENT OR DECREES.

41. Drawing minute of judgment, order or decree, per folio, when prepared by solicitor under direction of the judge..... .20
42. For every hour's attendance before judge on settling minutes... 1.00

LETTERS.

43. Common letters necessary in the course of the cause, including agency letters25

BILL OF COSTS.

44. Drawing bill of costs for taxation, including engrossing and copy for registrar, per folio..... .20

MISCELLANEOUS.

45. At the close of contentious proceedings, and on decree for probate or grant, the fees to the solicitor for taking out probate, or letters of administration, or of guardianship, shall be the same as is provided for by the tariff for non-contentious business.....
46. Where it has been proved to the satisfaction of the judge that proceedings have been taken by solicitors out of court to expedite proceedings, save costs or compromise actions or disputes, an allowance is to be made therefor in the discretion of the judge. This shall apply whether the proceedings are contentious or non-contentious

DISBURSEMENTS.

47. The fees paid to the registrar or other officer of the court, together with court fees, stamps and postage to be added to the

solicitor's bill in all cases, whether contentious or non-contentious.

48. In cases in which the person to be cited or served, cannot be served in Ontario, or in which he shall avoid service, or the service shall necessarily be effected beyond the jurisdiction, or by publication, such a sum is to be allowed for service, as the judge may consider reasonable under the circumstances, together with disbursements for publication of citation, etc., when necessary.

SHERIFFS.

Sheriffs shall be entitled to receive the same fees as are allowed for like services in the County Court.

WITNESSES.

There shall be allowed to witnesses the same fees and conduct money or travelling expenses as are taxable in the County Courts.

NOTE.—These tariffs are provided in lieu of, and not in addition to any previously existing tariff applicable to and heretofore allowed to solicitors and counsel, in respect of proceedings in the said Surrogate Courts for contentious and non-contentious business.

Framed and approved under the Acts of the Legislature of Ontario, 53 Viet., ch. 15, sec. 19 and sec. 78 of the Surrogate Courts Act.

TABLE OF FEES TO BE TAKEN BY JUSTICES OF THE PEACE OR THEIR CLERKS.

(R.S.O. 1897, Chapter 95.)

- | | |
|--|--------|
| 1. For an information and warrant for apprehension, or for an information and summons for assault, trespass or other misdemeanour | \$.50 |
| 2. For each copy of summons to be served on defendant or defendants | .10 |
| 3. For every subpoena (only one subpoena on each side to be charged for in each case which may contain any number of names) | .10 |
| (If the justice of the case requires it, additional subpoenas shall be issued without charge). | |
| 4. For every recognizance (only one to be charged in each case).... | .25 |
| 5. For information and warrant for surety of the peace for good behaviour (to be paid by complainant)..... | .50 |
| 6. For warrant of commitment for default of surety to keep the peace or for good behaviour (to be paid by complainant)..... | .50 |
| 7. For hearing and determining the case..... | .50 |
| 8. Where one justice alone cannot lawfully hear and determine the case, an additional fee for hearing and determining to be allowed to the Associate Justice..... | .50 |
| In case more justices hear the case, the justice by whom the information was taken, if he hears the case, shall be entitled to one fee of fifty cents for hearing and determining, and the justice who sat at his request shall be entitled as associate to the said additional fee, when one is chargeable. If a case occurs which is not covered by this provision, the justices shall be entitled to the fees according to their seniority as justices. | |

9. For warrant to levy penalty.....	.25
10. For making up every record of conviction where the same is ordered to be returned to the sessions, or on certiorari.....	1.00
11. But in all cases which admit of a summary proceeding before a single justice of the peace, and wherein no higher penalty than \$20 can be imposed, there only shall be charged for the conviction not more than.....	.50
And for the warrant to levy the penalty.....	.25
12. For copy of any other paper connected with any trial, and the minutes of the same if demanded, per folio of 100 words.....	.10
13. For every bill of costs (when demanded to be made out in detail).....	.10
(Items 12 and 13 to be only chargeable when there has been a conviction.)	

FEES OF ARBITRATORS.

(Under R. S.O. 1897, Chapter 62.)

FEES CHARGEABLE BY NON-PROFESSIONAL ARBITRATORS.

For every meeting where the cause is not proceeded with, but an enlargement or postponement is made at the request of any party, not less than.....	\$ 2.00
Nor more than.....	4.00
For every day's sitting, to consist of not less than six hours, not less than.....	5.00
Nor more than.....	10.00
For every sitting not extending to six hours (fractional parts of hours being excluded) where the arbitration is actually proceeded with, for each hour occupied in such proceedings at the rate of not less than.....	1.00
Nor more than.....	1.50

FEES CHARGEABLE BY PROFESSIONAL ARBITRATORS.

For every meeting where the cause is not proceeded with, but an enlargement or postponement is made at the request of any party, not less than.....	4.00
Nor more than.....	8.00
For every day's sitting, to consist of not less than six hours, not less than.....	10.00
Nor more than.....	20.00
For every sitting not extending to six hours (fractional parts of hours being excluded) where the arbitration is actually proceeded with, for each hour occupied in such proceedings, at the rate of not less than.....	2.00
Nor more than.....	3.00

DIVISION COURT TARIFF.

(R.S.O. 1897, Chapter 60.)

CLERK'S FEES.

1. Receiving claim, numbering and entering in procedure book.....	\$0.15
2. Issuing summons with necessary notices and warnings thereon, or judgment summons (as provided in the forms) in all:	
Where claim does not exceed \$20.....	.40
Where claim exceeds \$20 and does not exceed \$60.....	.50
Where claim exceeds \$60 and does not exceed \$100.....	.60
Where claim exceeds \$100.....	1.00

(N.B.—In replevin and interpleader suits the value of goods to regulate the fee.)

25	3. Copy of summons, including all notices and warnings thereon..	.25
00	4. Copy of claim (including particulars) when not furnished by plaintiff.....	.25
50	5. Copy of set-off or counterclaim (including particulars) when not furnished by the defendant.....	.25
25	6. Receiving and entering bailiff's return to any summons, writ or warrant issued under the seal of the court (except summons to witness and return to summons or papers from another division)	.15
10	7. Taking confession of judgment.....	.10
10	8. Every necessary affidavit, if actually prepared by the clerk, and administering oath to the deponent.....	.25
1.)	9. Furnishing duly certified copies of the summons and notices and papers, with all proceedings for purposes of appeal under section 151, as required by either party, per folio of ten words	.05
	10. Certificate therewith.....	.25
	11. Certifying under the seal of the court, and delivering to a judgment creditor a memorandum of the amount of judgment and costs against a judgment debtor, under the Creditors' Relief Act, or for any other purpose.....	.25
00	12. Copies of papers for which no fee is otherwise provided necessarily required for service or transmission to the judge each.....	.10
00	If exceeding two folios, per folio.....	.05
00	13. Every notice of defence or admission entered, or other notice required to be given by the clerk, to any party to a cause or proceeding, including mailing, but not postages.....	.15
00	14. Entering final judgment by clerk, on special summons, where claim not disputed.....	.50
00	15. Entering every judgment rendered at the hearing, or final order made by the judge.....	.50
50	16. Subpœna to witness.....	.25
	17. For every copy of subpœna required for service.....	.05
	18. Summons for jury (including copy for each jurymen) when required by the parties.....	1.25
00	19. Calling and returning jury ordered by the judge.....	.25
00	20. Every order of reference, or order for adjournment made at hearing, and every order requiring the signature of the judge, and entering the same, including final order on judgment debtor's examination.....	.25
00	21. Transcript of judgment to another Division Court.....	.25
00	22. Transcript of judgment to the County Court.....	.50
	23. Every writ of execution, warrant of attachment, or warrant of commitment, and delivering same to bailiff.....	.50
00	24. Renewal of every writ of execution, when ordered by the judgment creditor, or warrant of commitment, when ordered by the judge.....	.15
00	25. Every bond, when necessary, and prepared by the clerk, (including affidavits of justification and of execution).....	1.00
00	26. For necessary entries in the debt attachment book, in each case (in all).....	.20
	27. Transmitting transcript of judgment, or transmitting papers for service to another division, or to the judge, on application to him, including necessary entries, and mailing, but not including postages.....	.25
15	28. Receiving papers from another division for service, entering the same, handing to the bailiff, receiving and entering his return, and transmitting the same (if return made promptly, not otherwise).....	.30
40		
50		
30		
30		

29. Search, by person, not party to the suit or proceeding, to be paid by the applicant	10
Search, by party to the suit or proceeding, where the suit or proceeding is over one year old	10
30. Taking costs in defended suits after judgment pronounced	25
31. Making out statements of costs in detail (including bailiff's fees) at the request of any party, or for purpose of settlement or upon entering judgment by default.....	10
32. Taking bailiff's costs under section 7 of the Division Courts Act, 1889.....	25
33. Copying and transmitting to municipal clerk judge's decision in appeal.....	50

BAILIFF'S FEES.

1. Service of summons issued under the seal of the court, or judge's summons or order, on each person (except summons to witness and summons to jurymen: <table> <tr> <td>Where claim does not exceed \$20.....</td> <td>30</td> </tr> <tr> <td>Where claim exceeds \$20 and does not exceed \$60</td> <td>40</td> </tr> <tr> <td>Where claim exceeds \$60 and does not exceed \$100</td> <td>50</td> </tr> <tr> <td>Where claim exceeds \$100.....</td> <td>75</td> </tr> </table>	Where claim does not exceed \$20.....	30	Where claim exceeds \$20 and does not exceed \$60	40	Where claim exceeds \$60 and does not exceed \$100	50	Where claim exceeds \$100.....	75	
Where claim does not exceed \$20.....	30								
Where claim exceeds \$20 and does not exceed \$60	40								
Where claim exceeds \$60 and does not exceed \$100	50								
Where claim exceeds \$100.....	75								
2. For every return as to service under item 1: attending at the clerk's office and making the necessary affidavit (as provided by Rule 90)	15								
3. Service of summons on witness or jurymen, or service of notice	15								
4. Taking confession of judgment and attending to prove.....	10								
5. For calling parties and their witnesses at the sittings of the court in every defended case, and at the hearing of every judgment summons.....	15								
6. Enforcing every writ of execution, or summons in replevin, or warrant of attachment, or warrant against the body, each: <table> <tr> <td>Where claim does not exceed \$20.....</td> <td>50</td> </tr> <tr> <td>Where claim exceeds \$20 and does not exceed \$60.....</td> <td>75</td> </tr> <tr> <td>Where claim exceeds \$60.....</td> <td>1.00</td> </tr> </table>	Where claim does not exceed \$20.....	50	Where claim exceeds \$20 and does not exceed \$60.....	75	Where claim exceeds \$60.....	1.00			
Where claim does not exceed \$20.....	50								
Where claim exceeds \$20 and does not exceed \$60.....	75								
Where claim exceeds \$60.....	1.00								
7. Every mile necessarily travelled to serve summons, or process, or other necessary papers, or in going to replevy goods, or to seize on attachment, or in going to seize on a writ of execution, where money paid on demand or made on execution, or case settled after seizure.....	12								
8. Mileage going to arrest under a warrant, when arrest made, per mile	12								
9. Mileage carrying delinquent to prison, including all expenses and assistance, per mile	20								
10. Every schedule of property seized, attached or replevied, including affidavit of appraisal, when necessary: <table> <tr> <td>Not exceeding \$20</td> <td>30</td> </tr> <tr> <td>Exceeding \$20 and not exceeding \$60</td> <td>50</td> </tr> <tr> <td>Exceeding \$60</td> <td>75</td> </tr> </table>	Not exceeding \$20	30	Exceeding \$20 and not exceeding \$60	50	Exceeding \$60	75			
Not exceeding \$20	30								
Exceeding \$20 and not exceeding \$60	50								
Exceeding \$60	75								
11. Every bond when necessary, when prepared by the bailiff, including affidavits of justification and of execution.....	50								
12. Every notice of sale not exceeding three, under execution or under attachment, each.....	15								
13. Reasonable allowances and disbursements necessarily incurred in the care and removal of property. <table> <tr> <td>(a) If bailiff removes property seized, he is entitled to the fees for seizure and mileage.</td> <td></td> </tr> <tr> <td>(b) If he takes a bond, then to fifty cents instead of disbursements, for removal of property.</td> <td></td> </tr> </table>	(a) If bailiff removes property seized, he is entitled to the fees for seizure and mileage.		(b) If he takes a bond, then to fifty cents instead of disbursements, for removal of property.						
(a) If bailiff removes property seized, he is entitled to the fees for seizure and mileage.									
(b) If he takes a bond, then to fifty cents instead of disbursements, for removal of property.									

- (c) If assistance is necessary in the seizure or securing or removal or retaining of property, the bailiff is entitled to the disbursements for such assistance.
 - (d) All charges for disbursements are to be submitted to the clerk for taxation, subject to appeal.
 - (e) The bailiff must in all cases endorse a memorandum of all his charges on the back of the execution, or state them on a separate slip of paper, so that the clerk may conveniently tax the bailiff's charges for fees and disbursements.
 - (f) The clerk is in all cases to sign the memorandum of his taxation and preserve it among the papers in the cause, together with the execution, for future reference, and thereby enable the clerk to certify the bailiff's returns properly.
14. If execution or process in attachment in the nature of execution be satisfied, in whole or in part, after seizure and before sale, whether by action of the parties or otherwise, the bailiff shall be entitled to charge and receive three per cent. on the amount directed to be levied, or on the amount of the value of the property seized, whichever shall be the lesser amount.
15. Poundage on executions, and on attachments in the nature of executions, five per cent., exclusive of mileage for going to seize and sell, upon the amount realized from property necessarily sold.

The property must necessarily be sold.

FEE TO WITNESSES AND APPRAISERS.

ALLOWANCE TO WITNESSES.

Attendance per diem to witnesses residing within three miles of the place where the court is held, if within the county.....	.75
And if without the county.....	1.00
Attendance if witness resides over three miles from the place of sittings and within the county, per diem.....	1.00
Attendance if witness resides without county and more than three miles from the place of sittings, per diem.....	1.25
Barristers and solicitors, physicians and surgeons, engineers and veterinary surgeons, other than parties to the cause, when called upon to give evidence of any professional service rendered by them or to give professional opinions, per diem.....	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 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.	

FEE TO APPRAISERS.

FEE TO APPRAISERS OF GOODS, ETC., SEIZED UNDER WARRANT OF ATTACHMENT.

To each appraiser fifty cents per day, during the time actually employed in appraising goods, to be paid in the first instance by plaintiff and allowed in the costs of the cause.

FEES IN SUITS UNDER TEN DOLLARS.

CLERK.

For all services from entering action or suing out a judgment of interpleader summons, up to and including the entering of final judgment, or final order on any such judgment, or interpleader summons, in case the action proceeds to judgment or final order.....	1.25
For issuing writ of execution, warranty of attachment or warrant for arrest of delinquent, and entering the return thereto.....	.50

BAILIFF.

For all services rendered in serving summons and making return, and any other service that may be necessary before judgment is entered by the clerk or pronounced by the judge, mileage excepted.....	.40
For enforcing execution, schedule of property seized or attached, bond where necessary and all other necessary acts done by him after seizure, mileage excepted, if money made or case settled after levy.....	1.00

LAND TITLES FEES.

(Tariff of Fees payable to Masters and Local Masters under R.S.O. 1897,
(Chapter 138.)

APPLICATIONS FOR FIRST ENTRY OF OWNERSHIP.

Each document of title examined on application, exclusive of declarations and affidavits. Where property is worth \$2,000 or over.....	\$.30
Where property is worth less than \$2,000.....	.20
Each filing, except deeds, declarations, certificates, or other evidence filed with the application, and except tax receipts or certificates, or sheriffs' certificates as to executions.....	.10
Special proceedings or depositions, per hour. Where property is worth \$2,000 or over.....	1.50
Where property is worth less than \$2,000.....	1.00
Where proceedings do not take more than half an hour.....	1.00
Administering oath.....	.20
Marking exhibit.....	.20
Preliminary certificate for registration in registry office.....	1.00
Entry of ownership, five folios or under.....	1.00
Each folio above five.....	.20
Land certificate.....	1.00
Where more than five folios, each additional folio.....	.20
Final certificate for registration in registry office.....	1.00
Entering and filing objection.....	.50
Every order, summons or notice.....	.60
If more than three folios, each additional folio.....	.20
Comparing and authenticating copies of notices, every three folios.....	.05
Every appointment.....	.30
Each folio after the first.....	.20
Returning documents of title deposited in support of application, on its withdrawal or rejection.....	.50
Contribution to Assurance Fund. Fixed by the Act at one-quarter of a cent on the dollar of the value of the land, unless where a certificate with a possessory title is given when the contribution is one-eighth of a cent on the dollar.	

Upon the first registration under section 169 of the Land Titles Act of lands newly patented in districts where notices or other proceedings are necessary, local masters are, under section 172, to charge, in addition to their actual disbursements, the fees payable under this tariff in respect of such notices and proceedings, and no more. Where notices are not required, local masters are only to charge their actual disbursements.

REGISTRATION UNDER THE LAND TITLES ACT.

Transfer, charge or other instrument (except where otherwise specified), including search on the parcel and search for executions, when made at the time of registration, and also including entry of charge or partial transfer of land on certificate of title where certificate is produced at the time for this purpose.....	2.00
Where the instrument, including affidavits, is more than ten folios, each additional folio.....	.10
Where the instrument affects more parcels than one, each parcel after the first.....	.50
Transfer of charge, including search, etc., as above.....	1.00
Each charge after the first.....	.50
Cessation of charge (whole or partial), including noting same on land certificate, each charge.....	.80
Mechanic's claim of lien or discharge of claim.....	.30
Each person joining after the first.....	.10
Every caution.....	1.00
Each parcel after the first.....	.50
Discharge or withdrawal of caution.....	.80
Where any instrument is executed under a power of attorney, for each person so executing under a separate power.....	.20
Covenants or conditions running with the land, per folio.....	.20
Power of attorney, five folios and under.....	1.00
Each folio above five.....	.10

MISCELLANEOUS FEES UNDER LAND TITLES ACT.

Land certificate, or certificate of ownership of charge, five folios or under.....	1.00
Each folio above five.....	.20
Entry of ownership on land certificate, or certificate of charge, where same transferred to new owner.....	.50
Entering partial transfer of land or a charge, upon land certificate where certificate is not produced with transfer or charge.....	.20
Examination of evidence and registering owner on a transmission or insolvency.....	2.00
Each parcel after first.....	.50
Entry of survivors or other persons as owners in case of joint ownership.....	2.00
Each parcel after first.....	.50
Search on any one parcel.....	.20
Search in respect of any piece of land contained in one parcel where person searching cannot state the number of the parcel under which the land is last registered.....	.40
Exhibiting plan or original instrument.....	.10
Search in execution book. Each name.....	.20
Examination of proceedings on sale of mortgaged land under power in charge.....	4.00
Entry of consent of cautioner to registration of another instrument without discharging caution.....	.80
Entry of foreclosure, restrictions, or inhibition.....	2.00

Entry of discharge of any writ or writs of execution. Each name.....	.50
Entry of payment of taxes. Each parcel.....	.20
Inspection of any documents retained on land being brought under the Act.....	1.00
Special case or certificate to court.....	1.00
Each folio over five.....	.20
Each certificate by the master (other than a certificate of registration on a duplicate charge, or mortgage, or entry on a land certificate, and where not otherwise specified), where not more than one folio.....	.50
Where above one folio, each additional folio.....	.20
Certificate of clerk of municipality that any named person is owner of any parcel of land, subject to incumbrances or not without setting out the same, where not more than one folio, including search.....	.50
Each additional folio.....	.20
Copy or extract from any document filed or registered, per folio.....	.10
Certifying same.....	.30
Order on application for a duplicate certificate of ownership where original lost or mislaid.....	1.00
Hearing special application or objection, per hour.....	1.50
Where proceedings do not take more than half an hour.....	1.00
Entry of determination of lease.....	1.00
Each parcel affected after the first.....	.50
Every plan deposited, including entry of lots in register, if not more than fifty lots.....	1.00
Additional for each five lots above fifty.....	.10
No charge beyond one dollar to be made where plan is a copy or duplicate of a plan filed in registry office before land is brought under Land Titles Act.	
For proceedings not designated above, but which are similar to those designated, the like fees. Where no similar proceeding is designated, the like fee as would be payable for the proceeding if taken in the H. C. J.	

COSTS OF DISTRESS OR OF SEIZURE OF CHATTELS.

(Under R.S.O. 1897, Chapter 75.)

No person making distress for rent, or for a penalty, where the sum demanded and due, in respect of the rent or penalty, does not exceed \$80, and no person employed in making the distress, or doing any act in the course of the distress for carrying the same into effect, shall take or receive from any person, or out of the produce of the chattels distrained and sold, any other costs in respect of the distress than such as are set forth in Schedule A hereunto annexed. R.S.O. 1887, ch. 63, sec. 1, part.

When the sum to be levied by distrainers for rent or for any penalty exceeds the sum of \$80, no further charges shall be made for or in respect of costs or expenses by any person making the distress, or employed in doing any act in the course of such distress, than such as are set forth in Schedule A of this Act, except the following, that is to say :

- The actual expenses or outlay reasonably incurred in removing the goods distrained, or part thereof, when such removal is necessary.
- Advertisement when necessarily published in a newspaper, \$2; but not exceeding \$5.
- If any printed advertisement, otherwise than in a newspaper, \$1, but not to exceed \$3.
- The sum of \$1 per day for man keeping possession, in lieu of 75 cents per day as allowed in said Schedule A.

- (e) Where the amount due shall be satisfied in whole or in part, after seizure and before sale, the bailiff or person seizing shall be entitled to charge and receive but three per cent. on the amount realized, in lieu of five per cent., and no more. R.S.O. 1887, ch. 143.

No costs shall be levied for or in respect of the seizure upon exempted goods when they may not be lawfully sold, and when sold no greater sum in all than \$2, and actual and necessary payments for possession money, shall be levied or restrained for or in respect of costs and expenses of sale of such exempted goods.

No person making a seizure or sale of goods for default in payment of the principal money or interest secured by any chattel mortgage or bill of sale shall charge any greater or other fees or costs with respect to such seizure or sale than those set forth in Schedule B hereto annexed.

No person shall make any charge for anything mentioned in the said schedule unless such thing has been actually done.

If a person offends against any of the provisions of the proceeding sections the party aggrieved may apply to a justice of the peace for the county, city or town where the offences were committed for the redress of the grievance, whereupon the justice shall summon the person complained of to appear before him at a reasonable time to be fixed in the summons, and the justice shall examine into and hear the complaint and defence; and if it appears that the person complained of has so offended, the justice shall order and adjudge treble the amount of the money unlawfully taken, and full costs, to be paid by the offender to the party aggrieved.

SCHEDULE A.

COSTS ON DISTRESS FOR SMALL RENTS AND PENALTIES.

1. Levying distress under \$80	\$1.00
2. Man keeping possession, per diem	.75
3. Appraisement, whether by one appraiser or more, two cents in the dollar on the value of the goods	
4. If any printed advertisement not to exceed in all	1.00
5. Catalogues, sale and commission, and delivery of goods, five cents in the dollar on the net produce of the sale	

SCHEDULE B.

COSTS ON SEIZURE UNDER CHATTEL MORTGAGES, OR BILLS OF SALE.

1. For making seizure where amount of debt does not exceed \$100	\$1.00
2. For making seizure where amount of debt exceeds \$100	1.50
3. One man keeping possession, per diem	1.00
4. If any printed advertisement, the same not to exceed in all	1.50
5. For catalogues, sale and commission and delivery of goods, five cents on the dollar on the net proceeds of the sale up to \$100, and where the proceeds of the sale exceed \$100 two and one-half per cent. on the excess over \$100.	
6. Where debt is paid before sale, a commission of two cents on the dollar, and the amount actually disbursed in cartage, not to exceed	2.00

HEIR AND DEVISEE COMMISSION.

(R.S.O. 1897, Chapter 31.)

The following fees in respect of proceedings had under this Act shall be payable to the Crown in stamps, subject to the provisions of the Act respecting Law Stamps:—

1. For filing every petition, twenty cents.
 2. On every claim entered and received, fifty cents.
 3. For setting down a claim for hearing, fifty cents.
 4. On the hearing of a claim, one dollar.
 5. On every claim allowed, fifty cents.
 6. For making up a report on the same, two dollars.
 7. For every certificate of the allowance of a claim, twenty-five cents.
 8. For a copy of the order respecting a claim, twenty-five cents.
 9. For each summons for the attendance of any witness or witnesses, forty cents.
 10. For every commission for the examination of witnesses, two dollars.
 11. For a certified copy of any paper or document in the custody of the clerk of the commissioners, twenty-five cents for the certificate, and at the rate of ten cents for every one hundred words in such copy.
 12. And such reasonable fees for any service not herein specially mentioned or included therein as the commissioners may from time to time direct.
- Every person, authorized by section 11, to take affidavits in proceedings under this Act (not being one of the commissioners) shall for every affidavit or affirmation so taken before him be entitled to demand and recover from the party requiring him to take the same the sum of twenty-five cents and no more.

The fees may be required to be paid before the service for which they are granted is performed, or if not so required, may be recovered in the manner hereinbefore appointed with regard to the sum allowed to a witness.

It shall not be necessary in an action to prove the signatures of the clerk or commissioner, if the party intending to produce the same has given due notice of his intention to an adverse party according to the course and practice of the court, unless the adverse party has afterwards in like manner signified his intention to dispute the signatures, or either of them, in which case it shall be requisite to prove the same and the costs attending the proof may, in the discretion of the court, be allowed to the party making proof, whatever be the result of the action.

TABLE OF FEES TO BE RECEIVED BY SHERIFFS,
CORONERS, CLERKS OF THE PEACE, CONSTABLES
AND CRIERS, IN THE ADMINISTRATION OF
JUSTICE, UNDER R.S.O. 1897.
CHAPTER 101.

SHERIFFS.

1. Attending the assizes, per diem.....	\$ 5.00
2. Attending the general sessions, per diem.....	5.00
3. Summoning each grand jury for the assizes or general sessions.....	12.00
4. Summoning each petit jury for the assizes or general sessions.....	24.00
5. For every prisoner discharged from gaol, having been committed by warrant for trial at the assizes or general sessions.....	1.00
6. For the discharge from gaol of every prisoner convicted by a police or stipendiary magistrate under Part LV. of the Criminal Code, 1892.....	1.00
7. Bringing up each prisoner for arraignment, trial and sentence in all, for each prisoner, whether convicted or acquitted.....	2.00
8. For arraignment, trial and sentence, in all for each prisoner, whether convicted or acquitted, who has been out on bail.....	2.00

9.	Drawing calendar of prisoners for trial at the assizes, including copies.....	5.00
10.	Advertising the holding the assizes.....	4.00
11.	Advertising the holding the general sessions.....	4.00
12.	Every annual or general return required by law or by the Government, respecting the gaol or the prisoners therein.....	5.00
13.	Every other return made to the Government.....	4.00
14.	Every return made to the Legislature.....	4.00
15.	Every return to the sessions required by statute or by order of the court.....	2.00
16.	Every return which may be required by the county or county council.....	1.00
17.	For every return to the Inspector of Legal Offices.....	2.00
18.	Drawing calendar of prisoners for trial at the general sessions, including copies.....	4.00
19.	Returning precepts to the assizes or sessions.....	4.00
20.	Conveying prisoners sentenced at the assizes or sessions to the penitentiary or reformatory, or to another county (exclusive of disbursements), for each day necessarily employed.....	6.00
21.	Arrest of each individual upon a warrant (to be paid out of the county funds or by the party, as the case may be).....	3.00
22.	Serving subpoena upon each person (to be paid out of the county funds or by the party, as the case may be).....	1.00
23.	Travelling in going to execute warrant or serve subpoena, or in returning with a prisoner in the case of the sheriffs of Algoma, Bruce, Carleton, Essex, Grey, Hastings, Huron, Kent, Lambton, Leeds, Grenville, Lincoln, Middlesex, Northumberland, Durham, Oxford, Perth, Simcoe, Thunder Bay, Toronto, Victoria, Welland, Wellington, Wentworth and York, per mile actually travelled.....	.10
	Other sheriffs.....	.13
	(To be paid out of the county funds, or by the party, as the case may be; where the service has not been effected the board of audit is to be satisfied that due diligence has been used.)	
24.	Conveying prisoners on attachment, judge's order or habeas corpus to another county, exclusive of disbursements, where no charge allowed by law, for each day necessarily employed (to be paid out of the county funds, or by the party, as the case may be).....	6.00
25.	Making return upon attachment or writ of habeas corpus (to be paid out of the county funds, or by the party, as the case may be).....	2.00
26.	Levying fines or issues on recognizance estreated, or other process (to be levied under sec. 5 of Rev. Stat. ch. 101: \$5 per \$100 on the first \$400 of the sum levied, exclusive of mileage at ten cents per mile, and on all sums above \$400 the same allowances on executions in civil proceedings).....	
27.	Carrying into execution the sentence of the court in capital cases. All such sums as are unavoidably disbursed, to be taxed by the court or judge who passed the sentence.....	20.00
28.	Attending and superintending the execution in such cases.....	
29.	Summoning each constable to attend the assizes or general sessions, exclusive of mileage at ten cents a mile.....	.50
30.	Keeping a record of jurors who have served each court.....	2.00
31.	Disbursements actually and necessarily made in guarding prisoners, or in their conveyance to the penitentiary or reformatory, to any other county or elsewhere, or for other purposes in the discharge of the duties of his office (where not provided for by law, nor hereinbefore specifically provided), to be ren-	

- dered in account in detail, with proper vouchers to the satisfaction of the board of audit, and to be by the board allowed.....
32. Disbursements actually and necessarily incurred while in attendance upon a judge of the High Court when holding a sittings of the High Court, or incurred in obedience to his order, the amount to be paid by the treasurer of the county upon the order of the sheriff.....
33. Keeping a record of constables at the assizes or sessions, each.. 2 00

FOR SERVICES IN THE COUNTY JUDGE'S CRIMINAL COURT.

34. Notification to judge, in all for each prisoner..... \$ 1.00
35. Bringing-up prisoner before judge, to elect as to mode of trial, including attendance at court, each person..... 2.00
36. Bringing-up prisoner for arraignment on trial, and for sentence, including attendances at court, in all for each prisoner, whether convicted or acquitted..... 2.00
37. For serving subpoenas, arrest under warrant, travel to serve or execute a process, and conveying prisoner to penitentiary or reformatory, the like sum as is allowed for like services in other cases under this Act.....

FOR SERVICES IN CONNECTION WITH OFFENDERS SENTENCED, OR LIABLE TO BE REMOVED TO THE CENTRAL PRISON.

38. For making special return of prisoners sentenced to Central Prison, and of such prisoners eligible for removal to Central Prison, as the inspector may direct, each prisoner..... \$ 1.00
(No more than \$5 to be allowed for any one return, and each return must cover all prisoners in gaol when the same is made.)
39. Certified copy of sentence..... .50
40. Taking prisoner to railway station, to be delivered to Central Prison bailiff, in addition to other necessary expenses incurred in such duty..... 1.00

FOR OTHER SERVICES.

41. Return and services in respect of inquisition on body of a prisoner dying in gaol..... \$ 4.00
42. For general supervision over the gaols and prisoners therein, and the books kept in connection with the gaol, in addition to any other allowance, and for stationery and postage, per quarter..... 25.00
43. For every prisoner discharged from gaol other than prisoners committed by warrant for trial at the assizes or general sessions.. 1.00
44. For services performed under 55-56 Vict., ch. 29, s. 960 (Dom.), in each case disposed of under that section..... 2.00
45. For each day's attendance at an adjournment of the County Judge's Criminal Court, in each case 2.00
Provided that the sheriff shall not be allowed more than \$4 in respect of the same day's service.

CORONERS.

1. Precept to summon jury..... \$.50
2. Empanelling a jury..... 1.00
3. Summons for witnesses, each..... .25
4. Information or examination of each witness..... .25
5. Taking every recognizance..... .50
6. Necessary travel to take an inquest, per mile..... .20
7. Taking inquisition and making return..... 4.00
8. Every warrant..... 1.00

CLERKS OF THE PEACE.

1. Drawing precepts to summon the grand and petit juries attending justices to sign, and transmitting to the sheriff.....	6.00
2. Attending each general session for the first day.....	6.00
3. For each additional day, not including time occupied by the County Court.....	4.00
4. Making up records of each general sessions (when completed) including quarterly record of returns of convictions required by sec. 6, R.S.O., ch. 93.....	15.00
5. Notice of every appointment of a constable, under R.S.O., ch. 99, or other officer appointed by the justices in session or by the chairman.....	.25
6. Drawing every special order of the court of general sessions necessary to be communicated to any party, and entering it on record.....	1.00
7. Notice of any order made by the general sessions, and letter transmitting same, when required to be notified to any person or party.....	.50
8. Copying orders of the court and causing the same to be published where it is requisite; for each order, exclusive of the expense of publication, per folio.....	.10
9. For issuing subpoena.....	.75
10. For every subpoena ticket, or copy of subpoena (when necessary and when not made out or charged for by the County Crown Attorney.....	.25
11. For issuing bench warrant.....	1.00
12. For drawing out and taking every recognizance of the peace, or for good behaviour if the person to be bound is in indigent circumstances.....	1.00
13. For drawing out and taking every recognizance to appear, whether of a prosecutor, prisoner, or defendant, witness or other person.....	.50
14. For calling parties on their recognizance and recording their non-appearance, for each person called.....	.25
15. For discharging a recognizance.....	.50
16. Drawing order of the sessions, or chairman to estreat and put in process (on the whole list).....	1.00
17. Entering any order of the sessions, or of the chairman who presided at the sessions, to remit any estreat, and recording an entry on the same.....	.50
18. Preparing list each session; specifying names of persons making default under R.S.O., ch. 106, sec. 7.....	.50
19. Entering and extracting upon a roll, in duplicate, the fines, issues, amerciaments, and forfeited recognizances recorded in each session, making oath to the same, and transmitting to the sheriff.....	2.00
20. Making out and delivering to the sheriff the writ of fieri facias and capias thereon.....	.75
21. Making out and certifying copy of roll and return of the sheriff and transmitting it to the Provincial Treasurer.....	1.00
22. Copies of depositions or examinations furnished to prisoners accused of felony, or their counsel, per folio of 100 words (when required by the accused, or his counsel, and ordered by the court. This fee not to be charged when copies are furnished by the Crown attorney).....	.10
23. Receiving and filing each indictment when bill returned by the grand jury.....	.50
24. Receiving and filing each presentment of the grand jury.....	.50

25. For a copy of the presentment of the grand jury, forwarded by order of the Court of General Sessions to the Government, or to the Inspector of Prisons, or to county council, per folio	.10
26. Arraigning each prisoner, or defendant indicted	.75
27. Recording plea, or receiving and filing demurrer	.50
28. Empanelling and swearing the grand jury in every case	1.00
29. Empanelling and swearing the petit jury in every case	.75
30. Swearing each witness to go before, or sworn before, the grand jury	.20
31. Charging the jury with prisoner, or defendant, upon each indictment	1.00
32. For filing each exhibit, list, return, or other paper connected with the proceedings in the Court of General Sessions where no charge therefore is specially provided	.10
33. Swearing each witness upon any trial or proceeding before the court	.20
34. Receiving and recording verdict of petit jury	.50
35. Recording each judgment or sentence of the court upon a verdict of confession	1.00
36. Making out and delivering to the sheriff a calendar of the sentences at each court	1.50
37. Making out a certified copy or abstract of sentences sent with the prisoners to the Penitentiary, Central Prison, or Reformatory, after each session	1.00
38. Making up record of conviction or acquittal in any case where it may be necessary	1.00
39. Discharging prisoner by proclamation, each	.50
40. Every allowance of certiorari to be paid by the party applying, except when he is in indigent circumstances	1.00
41. Furnishing to sheriff and each of the coroners revised lists of constables, when a revision has been made and when ordered to be done by the justices in general or adjourned sessions, for each list	1.00
42. Reading statute or public proclamation when required to be done by law	.25
43. Making every copy or extract of a record or paper or document of any kind, required to be made by law, or by the order of the justices in sessions, or by the order of the Government in any of its departments, or for the information and use of the Government when required, and when no charge is fixed by law, per folio	.10
44. Causing public notice to be proclaimed in open court of the general sessions, of an intention to alter or rescind previous orders respecting the number and extent of any one or more of the Division Court limits under sec. 15 of the Division Courts Act	.50
45. Drawing out such orders of sessions, for altering the limits of Division Courts, per folio	.20
46. Making out and transmitting copies of such orders to the Government, per folio	.10
47. Making out and transmitting copies of such orders to each clerk of a Division Court affected by such alterations, per folio	.10
48. Making up book of orders of sessions, declaring the limits of Division Courts	1.50
49. Making out and transmitting copies (with letter) to the clerk of each Division Court	1.00
50. Making out and transmitting a copy thereof to the Government	1.00
51. For every necessary certificate, per folio	.20
52. Making out and transmitting to the Provincial Treasurer a return or schedule of all convictions which have taken place before the court, each list including letter	1.00

53.	Causing notice to be published of any special or adjourned sessions, when directed by the chairman or other two justices, so to do, besides amount paid for publication.....	1.00
54.	Sending notice of any such session to the justices individually, when it is directed by the chairman or other two justices, for each notice.....	.20
55.	Attending each adjourned or special sessions and making up record of same, when completed.....	5.00
56.	Making out warrant of distress or commitment, in any case where no fee is specially assigned therefor by any statute, or by this tariff.....	1.00
57.	Swearing constable in open court.....	.20
58.	Receiving, filing and recording each oath of qualification of a justice of the peace.....	.25
59.	Every letter written, by direction of the justices in sessions, to the Government, or justices, or coroners, or constables or others, upon matters connected with the business of the court or the administration of justice.....	.25
60.	All necessary outlays for postage and publishing to be added in all cases The above tariff of fees and costs shall also be applicable in all proceedings where costs are chargeable or ordered to be paid by private parties, together with the following additional items:	
61.	Certifying the result of each appeal heard and determined by the Court to the convicting justice, or to any other party requesting the same under any statute.....	.50
62.	For every single search.....	.20
63.	For every general search.....	.50
64.	Receiving and filing notices of appeal and the appeal from any judgment or conviction by one or more justices where an appeal is given by law to the court of general sessions of the peace.....	.50
65.	When the appeal called, on reading the conviction, notice of appeal and recognizance.....	.50
66.	For all other services upon the trial of such appeal case, when tried by a jury, the same charges as hereinbefore specified in other trials.....	
67.	Issuing process to enforce the order of the court in appeal case when required by law.....	1.00
68.	For each copy of schedule of the times and places of holding the Division Courts, with the order of sessions, and forwarding the same to each Division Court clerk.....	.50
69.	Drawing bill of costs, including taxation and filing the same where necessary to be made and filed, as in cases of assault, nuisances, or the like, and in appeals (to be paid by the party).....	.50
70.	For every certificate required of proof of a deed (to be paid by the party applying for the same).....	1.00
71.	Receiving and filing affidavit of bastardy—(see Rev. Stat. ch. 169, sec. 3) (to be paid by the party producing it).....	.25
72.	Receiving and filing each tender for any public work, or supply, or printing, or other service.....	.25
73.	Making out a list of the several tenders on each occasion as they are opened, specifying the names, prices, and other particulars, and filing the same when required to be done by the justices.....	.50
74.	Drawing bonds or agreements for the delivery of articles, or for doing the work for the gaol or other county purposes, and attending execution when required by the justices.....	1.00
75.	Receiving and filing accounts and demands, preferred against	

the county, numbering them, and submitting them for audit, and making out the cheques.....	4.00	
76. Making out and delivering lists of orders on the treasurer, made at each audit.....	2.00	
77. For every report or return required by statute, or by the Government, where no remuneration has been provided by this table or by statute.....	1.00	
78. Making out and transmitting a return to the Government of justices and coroners who have taken the oaths, when required to be done, for each return.....	1.00	
79. Swearing each party to an affidavit, where no charge is elsewhere provided for it (to be paid out of the county funds, or by the party by whom the affidavit is sworn, according to the nature of the case).....	.20	
80. Drawing certificate of approval by the justices in sessions, of sureties tendered by the sheriff (to be paid by the sheriff).....	.50	
81. Administering oaths to any public officer, when authorized so to do (to be paid by officer).....	.25	
82. For distributing the statutes to the justices and county officers, or others, when directed by the statutes or the Government so to do, and taking receipts therefor, from each justice or officer.....	.10	
83. For accounting to the county member for the copies of statutes not called for by the justices and county officers, and delivering the same to him, whenever such duty is required by statute or by the Government, and no other fee allowed.....	1.00	
84. For receiving and filing voters' lists for an entire municipality under Rev. Stat. ch. 7, secs. 20 and 21, each list.....	.25	
85. For filing each list, return, or other paper, where no charge is specially provided for, except accounts and claims against the county, and papers connected with matters to be charged against private individuals (to be paid out of the county funds, or by the party for whom the service is rendered, according to the nature of the case).....	.08	
(a) When the offices of the clerk of the peace and county crown attorney are held by the same individual, and there is a similar or same fee provided for the same service to each officer, only one fee is to be charged or allowed.		
(b) Items numbered from 1 to 67 of the foregoing tariff shall only apply to proceedings in the courts of general sessions of the peace, and shall not supersede any existing tariff of fees for services rendered by the clerk of the peace out of sessions.		

FOR SERVICES IN COUNTY JUDGE'S CRIMINAL COURT.

86. Attending and service in court and making all necessary entries, for each prisoner brought before the judge and not consenting to be tried, in all.....	.50	
87. For attendance in court and services rendered at trial, making necessary record of proceedings, and all necessary entries, including calendar of conviction, for each prisoner.....	2.00	
88. Preparing judge's warrant to bring up the body of prisoner, and delivering the same to the sheriff, for each prisoner.....	.50	
89. Issuing writ of summons to witness when necessary.....	.40	
90. Copy of summons, each.....	.20	
91. Warrant of remand, when issued and delivered to sheriff.....	.50	
92. For warrant to arrest, taking and estreating recognizances and proceedings to enforce same (the same fees as allowed for like services at the general sessions of the peace).		

CONSTABLES.

1. Arrest of each individual upon a warrant.....	\$ 1.50
2. Serving summons or subpoena	.25
3. Mileage to serve summons, subpoena or warrant	.13
4. Mileage when service cannot be effected, upon proof of due diligence.....	.13
5. Mileage taking prisoner to gaol, exclusive of disbursements necessarily expended in his conveyance.....	.10
6. Returning with prisoner after arrest, conveyance or railway fare for prisoner. Only reasonable disbursements to be allowed, and public conveyance to be used when practicable.	
7. Attending justices on summary trials, or on examination of prisoners charged with crime, for each day necessarily employed in one or more cases	1.50
8. Attending assizes or sessions, each day	1.50
9. Mileage travelling to attend assizes, sessions, or before justices (when public conveyance can be taken only reasonable disbursements to be allowed).....	.10
10. Summoning jury for coroner's inquest, including attending at inquest and all services in respect thereof, if held on same day as jury summoned.....	3.00
11. Attending each adjournment thereof.....	1.50
12. Serving summons or subpoena to attend before coroner (subject to No. 10).....	.25
13. Mileage serving same	.13
14. Exhuming body under coroner's warrant	4.00
15. Reburying same.....	2.00
16. Serving distress warrant, and returning same	1.50
17. Advertising under distress warrant.....	1.00
18. Travelling to make distress, or to search for goods to make distress, when no goods are found	.13
19. Appraisements, whether by one appraiser or more, two cents in the dollar on the value of the goods.	
20. Catalogue, sale and commission, and delivery of the goods, five cents in the dollar on the net produce of the goods.	
21. Executing search warrant.....	1.50
22. Serving notices on constables, when personally served.....	.50

CRIERS.

1. Making proclamation for opening or adjourning the court of assize and nisi prius, oyer and terminer, and general gaol delivery, and general sessions	\$.20
2. Making every other proclamation	.20
3. Calling and swearing grand jury	.50
4. Calling and swearing every petit jury	.50
5. Calling and swearing every witness or constable	.10
6. Attending assizes and general sessions, per diem	1.00

COUNTY CROWN ATTORNEY AT GENERAL SESSIONS.

In all criminal cases at the courts of general sessions of the peace in which no costs have been ordered to be paid, or, if ordered to be paid, cannot be made of the defendant, the county crown attorney shall be entitled to receive, for the services rendered by him in each such case, the following fees to be paid upon the certificate of the chairman, and to be taken in lieu of, and not in addition to, the fees which have been heretofore payable for services rendered in such cases, viz.:

1. For receiving and examining all informations, depositions, documents, and papers connected with a criminal charge..... \$ 2.00

- | | |
|--|-------|
| 2. For preparing draft and engrossed copy of every indictment or charge | 2.00 |
| 3. For all business (except items 1 and 2 supra and the following) in conducting the prosecution to judgment as well before as after trial | 10.00 |
| 4. For every copy of subpoena | .20 |
5. For every other service not specified above, and for reports on cases of unusual and important character, a *quantum meruit* to be determined by the Attorney-General, on a consideration of the particular circumstances.
- (a) Where a number of charges are pending against the same person, and a conviction has been obtained on one or more indictments, fee and costs on the further proceedings upon the other charges are not to be made or allowed on taxation, unless in cases where the chairman would, in the event of additional convictions, impose a heavier sentence, or unless there are special circumstances which, in the opinion of the chairman, render it expedient that the other cases, or some of them, should be proceeded with and tried.
- (b) In cases of indictment for the obstruction, or the non-repair of a highway or bridge, or of indictment for nuisance (where there is a *bond fide* dispute as to boundary, or title, or claim of right, and where no present public inconvenience is being suffered from what is complained of), the county crown attorney shall not be entitled to charge costs to the public without the special sanction of the Attorney-General, but will collect his fees and costs from the parties only.
- (c) When the offices of county crown attorney and clerk of the peace are held by the same individual, and a similar, or the same fee is provided for the same service to each officer, only one fee is to be charged or allowed.

CHATTEL MORTGAGES AND BILLS OF SALE.

CLERK'S FEES UNDER R.S.O. 1897, CHAPTER 148.

For services under this Act the clerks aforesaid shall be entitled to receive the following fees:—

1. For filing each instrument and affidavit and entering the same in a book as aforesaid, fifty cents.
2. For filing an assignment of any instrument and making all proper endorsements in connection therewith, twenty-five cents.
3. For filing a certificate of discharge of any instrument and making all proper entries and endorsements connected therewith, twenty-five cents.
4. For a general search, twenty-five cents.
5. For production and inspection of any instrument filed under this Act, ten cents.
6. For copies of any document with certificate prepared, filed under this Act, ten cents for every hundred words.
7. For extracts, whether made by the person who made the search or by the officer, ten cents for every hundred words.

TARIFF OF FEES.

ON INVESTIGATION OF FIRES BY CORONERS UNDER PROVISIONS OF R.S.O. 1897, CHAPTER 275.

Where such inquiry has been held by a coroner in respect of fire in any city, town, or incorporated village in conformity with this Act, the coroner

holding the same shall be entitled therefor to the sum of \$10, and should the said inquiry extend beyond one day, then \$10 per diem for each of the two days thereafter, and no more; and in the case of an investigation concerning a fire occurring in any place, not within a city, town or corporated village, the allowance to the coroner shall be \$5 for the first day, and should the inquiry extend beyond one day, then \$4 for each of two days thereafter, and no more.

In all cases the party requiring such investigation shall alone be responsible for the expenses of and attending such investigation.

No municipality shall be liable for such expense unless the investigation is required by a requisition under the hands and seals of the mayor or other head officer of the municipality, and of at least two other members of the council thereof; and such requisition shall not be given unless there are strong special and public reasons for granting the same.

No expenses of, or for an adjournment of, such inquest shall be chargeable against or payable by the party or municipal corporation calling for or requesting the investigation to be held, unless it is clearly shewn by the coroner, and certified under his hand, why and for what purpose an adjournment took place, or became necessary in his opinion.

The fees payable to a provincial coroner and a justice of the peace in respect of an investigation under this Act shall be as enacted in sec. 7 of this Act in respect to a coroner.

EXCHEQUER COURT TARIFF.

Fees and Charges to be Allowed to Counsel, Attorneys and Solicitors on Taxation of Costs Between Party and Party.

INSTRUCTIONS.

1. For informations, statements of claim, and petitions of right....	\$ 5.00
2. For special cases, demurrers and answers thereto.....	5.00
3. To amend any pleading, when the amendment is proper and not occasioned by error or default.....	2.00
4. For brief, for moving, for injunction.....	2.00
5. For interrogatories and <i>viva voce</i> examinations of parties or witnesses.....	2.00
6. For special petitions or motions in interlocutory matters.....	2.00
7. For special affidavits, including affidavits on production, in the discretion of the registrar.....	1.00
7. For briefs in suits by information, statement of claim or petition of right in cause coming on for trial or hearing.....	2.00
9. To defend proceedings commenced by information, statement of claim or petition of right.....	5.00
10. To revive or add parties.....	2.00

THE PREPARATION OF PLEADINGS AND OTHER DOCUMENTS.

11. Drawing information, petitions of right or statements of claim, not exceeding twenty folios.....	\$ 5.00
12. Drawing defence, answer or other pleading not specially mentioned, not exceeding five folios in length.....	2.00
13. Engrossing any pleading so drawn, for printer, or in case of pleading not required to be printed, engrossing a clear copy thereof, per folio.....	.10
14. For examining and correcting the proof of any pleading or affidavit or other paper required to be printed, per folio.....	.05
15. Preparing joinder of issue, and filing same.....	1.00
16. Suggestion as to the death of parties and the like.....	1.50

17. Affidavit of service of information, statement of claim or petition of right.....	1.50
18. Special affidavit, not exceeding five folios.....	1.50
19. Every bill of costs, not exceeding five folios.....	2.00
20. Copies of all documents or papers, per folio.....	.10
21. Notice of motion.....	1.50
22. Certificate to appoint guardian <i>ad litem</i>	1.50
23. Summons to attend judge's chambers.....	1.50
24. Notice for service out of jurisdiction.....	1.50
25. Advertisements to be signed by Registrar, not exceeding five folios in length.....	1.50
26. Every writ of <i>mesne</i> or final process, not exceeding five folios....	2.00
27. Suing out of subpoena and <i>testificandum</i>	1.00
28. Suing out of subpoena <i>duces tecum</i>	1.25
29. For every folio beyond the number provided for in any case, and for drawing or amending every other proceeding, notice, petition or paper in a cause requiring to be drafted, not herein specially provided for, per folio of necessary matter.....	.20
(The above charge does not include engrossing or copies to file and serve).	

PERUSALS.

30. For perusing the print of an information, petition of right, statement of claim or amended information, petition of right or statement of claim, not exceeding twenty folios.....	\$ 1.00
31. For every folio exceeding twenty folios.....	.05
32. For perusing an amended information, petition or right, or statement of claim when amended in writing.....	1.00
33. (The same rate as above for perusing answers in print, or amended answers in writing).	
34. To the attorney or solicitor for perusing interrogatories, not exceeding twenty folios.....	1.00
35. For every folio exceeding twenty folios.....	.05
36. (Perusing all special affidavits filed by opposite party, including in the discretion of the registrar, affidavits on production, and examinations of party, at the same rate).	
37. For perusing copy of supplemental statement and copy of order to revive each.....	1.00
38. In cases where pleadings or papers are printed the amount actually and properly paid the printer is to be allowed, not exceeding per folio.....	.30

ATTENDANCE.

39. To inspect or produce for inspection documents pursuant to notice to admit or order for inspection.....	
40. On taxation of costs, each, per hour.....	\$ 1.00
41. To examine and sign admissions.....	
42. To obtain or give undertaking to defend, each.....	1.00
43. On a reference or examination of witnesses or parties, per hour.....	
44. On a summons at judge's chambers.....	
45. In court on motion, per hour.....	
46. In court on demurrer, special petition or application adjourned from judge's chambers, when set down for hearing or likely to be heard.....	
47. On consultation or conference with consul, if registrar think the same reasonable and proper.....	
48. On hearing or trial of any cause or matter per hour.....	
49. To hear judgment when same adjourned.....	

50. For order made at judge's chambers and get same entered, each	
51. To settle draft of any judgment, decree or order	
52. To pay money into court, each	2 00
53. Every other proper attendance	.50

BRIEFS.

54. For drawing brief, per folio, for original and necessary matter..	\$.20
55. For drawing brief, per folio, for matter not original, but necessary	.10
56. Copy of documents, per folio	.10
57. Copy of brief for second counsel, when fee taxed to him, per folio	.10
(But nothing shall be allowed for any copy of any pleading included in such brief, or any document which the registrar thinks was not reasonably and necessarily included therein, and the registrar may in any case in which he sees fit, allow a lump sum instead of, but not exceeding, the per folio allowance above provided for).	

LETTERS.

58. All necessary agency letters, in the discretion of the registrar (besides postage)	\$.50
--	--------

COUNSEL FEES.

59. Fee on drawing or settling pleadings, and advising on evidence	\$ 5.00
60. Fee on motion in court, not to exceed	10.00
61. Fee on argument of demurrer, not to exceed	20.00
62. Fee with brief on trial of issues or hearing, not to exceed	50.00
63. (No more than two counsel fees to be taxed without an order of a judge).	
64. Fee on motion for judgment, not to exceed	20.00
65. (The above fees to counsel may be increased by order of the court or a judge).	

SERVICES.

66. For services on a party or witness, such reasonable charges and expenses as may be properly incurred.	
---	--

OATHS AND EXHIBITS.

67. To commissioners for oaths	\$.20
68. To the attorney or solicitor for preparing each exhibit	.20
69. To commissioners for marking each exhibit	.10
70. Besides the registrar's fees, reasonable charges shall be allowed to the attorneys and solicitors for necessary disbursements and postage on services of notices, motions, subpoenas, translations, printing of the same, copies, and other incidental proceedings.	
71. In cases of special references, where, by order of the court or judge, the enquiry is to be proceeded with at some place other than Ottawa, or when the referee does not reside at the place where the enquiry is made, he shall then be allowed his actual travelling expenses and a per diem sustenance allowance of	4.00
72. For drafting report on reference, per folio	.30
73. Per diem fee during the time employed on the reference	10.00
(To be increased by order of the court or a judge).	
74. In actions under \$400, a deduction of one-third of the amount of the fees (other than disbursements) above allowed, shall be made by the taxing officer, unless otherwise ordered by the court or a judge.	

75. In any case where the defendants sever in their defence, the plaintiff's attorney, counsel or solicitor shall receive, on each additional issue, one-half of the sum which he would have received had there been but one issue; the whole amount to be payable in equal proportions by the party or parties to each issue.
76. When the proceedings are carried on according to the practice of Her Majesty's Superior Court in the Province of Quebec, and where the foregoing tariff may not provide for, or be applicable to any such proceedings, the fees shall be taxed according to the tariff from time to time in force in the said superior court.

FEES AND ALLOWANCES TO WITNESSES.

To witnesses residing within three miles of the Court House, per diem (not including ferry and meals)	\$ 1.00
Barristers, attorneys and physicians when called upon to give evidence in consequence of any professional services rendered by them, or to give professional opinions, per diem.....	5.00
Engineers, surveyors (a) and architects, when called upon to give evidence of any professional services rendered by them, and to give evidence depending upon their skill or judgment, per diem	5.00
If the witnesses attend in one cause only, they will be entitled to the full allowance. If they attend in more than one cause they will be entitled to a proportionate part in each cause only.	
When the witnesses travel over three miles they shall be allowed expenses according to the sum reasonably and actually paid, which in no case shall exceed 20 cents per mile one way.	

SHERIFF'S TARIFF.

EXCHEQUER COURT OF CANADA.

The following fees and allowances shall be taken and received by the sheriff in suits in the Exchequer Court of Canada:—

Every warrant to execute any process, mesne, or final, directed by the sheriff, when given to a bailiff	\$.75
Arrest, when amount does not exceed \$200	2.00
Arrest, when amount does not exceed \$400	4.00
Arrest, when over \$400	6.00
Bail or other bond	2.00
Assignment of the same	1.00
Service of process, <i>soire facias</i> , writ of revivor, information, or statement of claim, each defendant (no fee for affidavit of service in such cases to be allowed unless service made or recognized by the sheriff)	1.50
Serving other pleadings, subpoenas, rules, notices, or other papers (besides mileage)	.75
For each additional party served	.50
For each summoner on writ of <i>soire facias</i> , per day, to be paid by sheriff	1.00
Receiving, filing, entering and endorsing all writs, informations, statements, pleadings, rules, notices, or other papers, each.....	.25
Return of all process and writs (except subpoena), informations, statements, pleadings, rules, notices, or other papers	.50
Every search, not being a party to a cause or his attorney	.30
Certificate of result of such search when required—(a search for a writ against same party and for the then last six months)	.75
Fee on striking jury	2.50

MISCELLANEOUS TARIFFS.

375

	Serving each juror (besides mileage at 13 cents per mile).....	.50
	Returning panel of jurors	1.00
	Keeping and checking pay list of jurors' attendance in each case....	1.00
	Poundage on executions and on writs in the nature of executions where the sum made shall not exceed \$1000, six per cent.	
	Every jury sworn or cause tried before a judge.....	1.00
	When the sum is over \$1,000 and under \$4,000, three per cent ; when the sum is \$4,000 and over, one and a half per cent. in addition to the poundage allowed up to \$1,000, exclusive of mileage for going to seize and sell, and except all disburse- ments necessarily incurred in the care and removal of property.	
	Schedule taken on execution or other process, including copy to defendant, not exceeding five folios	1.00
	Each folio above five	.10
1.00	Drawing advertisements when required by law to be published in the official <i>Gazette</i> or other newspaper, or to be posted up in a court house or other place, and transmitting same, in each suit	1.50
5.00	Every necessary notice of sale of goods, in each suit	.75
	Every notice of postponement of sale, in each suit.....	.25
	The sum actually disbursed for advertisements required by law to be inserted in the official <i>Gazette</i> or other newspaper.	
5.00	Executing writ of possession, besides mileage	6.00
	Bringing up prisoner on attachment or <i>habeas corpus</i> , besides travel, at 20 cents per mile.....	1.50
	Actual and necessary mileage from the court house to the place where service of any process, paper, or proceeding is made, per mile	.13
	Seizing estate and effects on attachment against debtor.....	3.00
	Removing or retaining property, reasonable and necessary dis- bursements and allowance to be made by order of the court or a judge.	
	Presiding or attendance on execution of writ of enquiry or under any writ of escheate, or other writ of a like nature.....	5.00
the	Summoning each juror in such case.....	.25
	Bailiff's fee summoning jury, mileage, per mile.....	.13
.75	Hire of room, if actually paid, not to exceed \$2 per day.	
2.00	Mileage from the court house to place where writ executed, per mile	.13
4.00	Drawing bond to secure goods seized, if prepared by sheriff.....	1.50
6.00	Every letter written (including copy) required by party or his attorney respecting writs or process, when postage prepaid.....	.50
2.00	Drawing every affidavit when necessary and prepared by sheriff.....	.25
1.00	Giving possession of lands, 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.	

CORONERS.

The same fees shall be taxed and allowed to coroners for services rendered by them in the service, executions and return of process, as allowed to sheriffs for the same services as above specified.

TARIFF OF FEES TO CRIER.

The following fees shall be taxed to the crier of the said Exchequer Court:

	Calling every case with or without a jury.....	\$.50
	Swearing each witness or constable.....	.15
	Proclamation and calling parties connected with proceedings other than witnesses or constables, each person.....	.25
	On each inscription for enquete in actions not contested	

THE FOLLOWING FEES SHALL BE PAID TO THE REGISTRAR OF
THE EXCHEQUER COURT OF CANADA.

1. On filing every information, statement of claim and petition of right.....	\$ 2.00	
2. On filing every plea, answer, demurrer and exception to above.....	.10	
3. On filing every document, proceeding or paper not specially provided for.....	.10	
4. On marking every exhibit filed at trial, on reference or on examinations.....	.10	
5. On sealing and issuing every writ (besides filing).....	2.00	
6. On certifying every office copy of information, statement of claim or petition of right, and affixing seal of the court when necessary.....	2.00	
7. On every writ of subpoena.....	1.00	
8. Præcipe for writ of subpoena or any other præcipe not otherwise provided for.....	.10	
9. Amending every writ or other proceeding or paper.....	.30	
10. Every ordinary rule or order.....	.50	
11. Special rule or order, not exceeding six folios.....	1.00	
12. Each additional folio.....	.25	
13. Every judgment or court order, and entering the same.....	2.00	
14. Taxing every bill of costs (besides filing) per hour.....	1.00	
15. Every allocatur.....	1.00	
16. Every reference, inquiry, examination or other special matter referred to the registrar, for every meeting not exceeding one hour.....	1.00	
17. Every additional hour or less.....	1.00	
18. For every report made by the registrar upon such reference, etc.....	1.00	
19. On payment of money into court, every sum under \$200.....	1.00	
20. On to \$200 to \$400.....	2.00	
21. On \$400 and over.....	5.00	
22. Receipt for money in margin of answer, plea, etc.....	.25	
23. Every other certificate required from registrar (including any necessary search) and seal of the court when necessary.....	1.00	
24. Exemplification or office copy of proceedings, per folio.....	.10	
(A folio shall consist of 100 words).		
(a) All fees payable to the registrar are to be paid by means of stamps. See section 48 of 50-51 Vict., ch. 16.		
25. Every search for special paper, or a general search in one cause.....	.25	
26. Every search in any book.....	.25	
27. Every affidavit, affirmation, or oath administered by registrar.....	.25	
28. Every commission or order for examination of witnesses.....	1.50	
29. Entering or setting down any cause for trial or hearing on demurrer, special case, petition of right, information, statement of claim or otherwise.....	2.00	
30. Setting down a case by default.....	.50	
31. Every fiat or summons.....	.50	
32. Every appointment made by a judge.....	.50	
33. Every enlargement on application to judge in chambers or on return of summons or otherwise.....	.25	
34. Every appointment for taxation of costs or otherwise made by registrar.....	.25	
35. Enlargement of same.....	.10	
36. Comparing, examining and certifying transcript record (case) on appeal to Supreme Court of Canada.....	5.00	
37. Comparing any document, paper or proceeding with the original on file or deposited in the registrar's office, per folio.....	.03	
38. On each opposition for payment or claim above \$1,000.....	2.50	

On each opposition for payment or claim of \$400, but under \$1,000.....	1.60
On each opposition for payment or claim of \$400, or under.....	1.40
39. On each opposition to secure charges to annul or withdraw:	
In actions above \$1,000.....	2.50
In actions above \$400 but under \$1,000.....	1.60
In actions of \$400 or under.....	1.40
40. For preparing judgment of distribution.....	8.00
41. For drawing <i>proces verbal</i> upon improbation.....	2.50
42. On every deposition of every witness taken in writing (long hand), for every folio.....	.10
43. For taking down in writing, answers to interrogatories upon articulated facts.....	1.00
If over ten folios, for each additional folio.....	.10
44. Approving or taking bond, or recognizance.....	4.00

297, RULE 32.

MAY 1ST, 1895.

Rules 8, 9, 10 and 11 of the Exchequer Court of Canada, made by the General Order of the 15th day of December, 1888, have been repealed by Rule 32 of the General Order of May 1st, 1895, and the following substituted therefor:—

SHORTHAND WRITERS.

1. Every shorthand writer employed under the authority of the court shall, if directed by the judge, registrar, referee or commissioner before whom the examination of any witness is taken, or if requested by any party to the proceeding, furnish to such registrar, referee or commissioner, four copies of the notes of evidence, one of which shall be handed to the judge, one filed of record in the court, and others given to the plaintiff and defendant, respectively, when paid.
2. For taking and transcribing such examination or notes of evidence, there shall be paid to the registrar, acting registrar, referee, or commissioner, per folio..... \$.15
And if the copies are supplied daily the same may, in the discretion of the registrar, be increased to, per folio..... .20
If for any reason the evidence is not required to be transcribed, for each hour occupied by the examination..... 1.50
3. If such notes of evidence are furnished as hereinbefore provided by direction of the judge, registrar, referee or commissioner, the fee last mentioned shall be paid by the party who called the witness, but if furnished at the request of either party, then by such party.
4. If any fee herein mentioned is not paid by the party liable therefor it may be paid by the other party to the proceeding and allowed as a necessary disbursement in the cause, or the judge may make such an order in respect of such evidence and the disposal of the action or proceeding as to him seems just.
5. Any acting registrar, referee or commissioner to whom any such fee is paid shall forthwith transmit the same to the registrar of the court.

TABLE OF FEES TO BE TAKEN BY THE REGISTRARS,
MARSHALS AND PRACTITIONERS, ETC., IN
ADMIRALTY PROCEEDINGS IN THE
EXCHEQUER COURT OF
CANADA.

I. BY THE REGISTRAR.

I. FOR SEALING OR PREPARING INSTRUMENTS, ETC.

For sealing any writ of summons or other document required to be sealed.....	\$.50
For preparing any warrant, release, commission, attachment, or other instrument required to be sealed, or for attending the execution of any bail-bond	2.00
For preparing a receivable order or a receipt for money to be paid out of court.....	1.00
For preparing or sending any notice or issuing any appointment.....	.50
For preparing any other document, for every folio.....	.30
NOTE.—The fee for preparing shall include drawing and fair copy- ing or engrossing.	

II. FOR FILING.

On filing any instrument or other document	\$.20
--	--------

III. FOR EVIDENCE.

For attending at examination of any witness, per hour.....	\$ 1.00
For administering any oath or declaration.....	.20
For taking down and certifying the evidence of any witness examined before him, when the same is not taken down by a shorthand writer, for every folio.....	.20

IV. FOR THE TRIAL.

On setting down an action for trial.....	\$ 1.00
For attendance at the trial of an action, to be paid by the party whose case is proceeding, per hour.....	1.00
Swearing each witness	.20
On a final decree in an uncontested action.....	2.00
On a final decree in a contested action	4.00
For attendance before the judge when any order is made or act done, other than pronouncing a final decree.....	1.00
NOTE.—The above fees shall include the entry of the decree or order in the minute book.	

5. FOR REFERENCES.

For hearing any reference, according to the case, per day....	{ From \$ 5.00
	{ to..... 15.00
For preparing the report of a reference.....	5.00

6. FOR TAXATIONS.

For taxing a bill of costs:	
If the bill does not exceed ten folios	\$ 2.00
For every folio beyond ten.....	.20

7. FOR OFFICE COPIES, SEARCHES, ETC.

For a copy of any document, for every folio (in addition to the fee for sealing)	\$.10
For search	.20
For general search	.50

NOTE.—No search fee is to be charged to a party to the action while the action is pending, or for one year after its termination, or to any seaman.

8. BY THE ASSESSORS.

For each nautical or other assessor, whether at the examination of witnesses or at the trial of an action, or upon any assessment of damages or taking of an account, according to the case in the discretion of the judge, per day	From \$ 5.00 to 25.00
---	--------------------------------

NOTE.—That the above fees shall be paid to the registrar for the assessors, and in the first instance by the party preferring the claim.

II. FEES TO ACTING REGISTRARS.

1. For attendance at the trial of an action (to be paid by the party whose case is proceeding), per hour	\$ 1.00
2. Swearing each witness (to be paid by party producing witness)	.20
3. Marking each exhibit (to be paid by party filing same)	.10
4. On issuing each writ of subpoena	1.00
5. For copy of any document, per folio of one hundred words	.10
6. Each certificate required from the acting registrar. (The certificates required under Rule 125 to be paid by plaintiff)	1.00

III. BY A COMMISSIONER TO EXAMINE WITNESSES.

For administering any oath or declaration	\$.20
For taking down and certifying the evidence of any witness examined before him, when the same is not taken down by a shorthand writer, for every folio	.20

IV. BY A COMMISSIONER.

For attending the execution of any bailbond	\$ 2.00
For taking any affidavit of justification	.50

V. BY THE MARSHAL OR SHERIFF.

For the service of a writ of summons or subpoena, if served by the marshal or a sheriff	\$ 1.00
For executing any warrant of attachment	4.00
For keeping possession of any ship, goods, or ship and goods (exclusive of any payments necessary for the safe custody thereof), for each day	.50

NOTE.—No fee shall be allowed to the marshal for the custody and possession of property under arrest, if it consists of money in a bank, or of goods stored in a bonded warehouse, or if it is in the custody of a customs house officer or other authorized person.

On a release of any ship, goods or person from arrest	2.00
For attending the unelivery of cargo, for each day	8.00
For executing any commission of appraisement, sale or appraisement and sale, exclusive of the fees, if any, paid to the appraiser and auctioneer	4.00
For executing any other commission or instrument	4.00

On the gross proceeds of any ship, or goods, etc., said by order of the court:

If not exceeding \$400	4.00
For every additional \$400, or part thereof	2.00
NOTE.—If the marshal, being duly qualified, acts as auctioneer, he shall be allowed a double fee on the gross proceeds.	
For attendance at the trial of an action to be paid by the party whose case is proceeding, per hour	1.00
Calling each witness	.20
NOTE.—If the marshal or his officer is required to go any distance in execution of his duties, a reasonable sum may be allowed for travelling, boat hire or other necessary expenses in addition to the preceding fees, but not to exceed 10 cents per mile travelled.	

VI. FEES TO BE TAKEN BY APPRAISERS.

Each appraisement	{ From \$ 2.50
	{ to..... 10.00
(This fee may be increased to a sum not exceeding \$30.00, in the discretion of the judge).	

VII. BY THE SOLICITOR.

Retaining fee.....	\$ 2.00
For preparing a writ of summons (to include attendances in the registry for sealing the same).....	2.50
For bespeaking and extracting any warrant or other instrument prepared in the registry (to include attendances).....	1.00
For serving a writ of summons or a subpoena.....	1.00
For taking instructions for a statement of claim or defence	4.00
For drawing a statement of claim or defence	4.00
For taking instructions for any further pleading.....	1.00
For drawing any further pleading.....	2.00
For drawing any other document, for every folio.....	.20
For fair-copying or engrossing any document, for every folio	.10
For taking instructions for any affidavit (unless made by the solicitor or his clerk) or for interrogatories or answers, according to the nature or importance thereof.....	{ From 1.00
	{ to..... 4.00
For taking instructions for brief.....	{ From 1.00
	{ to..... 4.00
For attending counsel in conference or consultation.....	2.00
For attending to fee counsel.....	2.00
For attendance on any motion before the judge:	
If with counsel.....	2.00
If without counsel	4.00
For attending the examination of witnesses before the trial, for each day:	
If with counsel.....	4.00
If without counsel	8.00
For attendance at the trial for each day.....	{ From 4.00
	{ to..... 12.00
For attendance at the delivery of judgment, if reserved.....	2.00
For attendance at the hearing of a reference to the registrar for each day:	
If with counsel.....	{ From 4.00
	{ to..... 8.00
If without counsel.....	{ From 4.00
	{ to..... 8.00

For any other necessary attendance before the judge, or in the registry, or on the marshal, or on the adverse party or solicitor, in the course of the action.....	1.00
NOTE.—When more than one document can conveniently be filed, or one document can be filed and another be spoken, at the same time, the fee for one attendance only shall be allowed.	
For any necessary letter to the adverse party	.50
For serving any notice	.20
For extracting and collating any office copy obtained from the registry, for every folio	.10
For correcting the press, for every folio	.5
For attending the taxation of any bill of costs, not exceeding ten folios	2.00
For every folio beyond ten	.10

VIII. BY COUNSEL.

Retaining fee.....	\$ 5.00
For settling any pleading, interrogatories, or answers, etc.....	{ From 5.00 to..... 20.00
For any necessary consultation in the course of the action.....	{ From 5.00 to..... 10.00
For any action	{ From 5.00 to..... 15.00
For the examination of witnesses before the trial, for each day	{ From 10.00 to..... 20.00
For the trial of an uncontested action	10.00
For the trial of a contested action, for the first day	{ From 15.00 to ... 50.00
For each day after the first.....	{ From 10.00 to ... 25.00
For attending judgment if reserved	{ From 5.00 to ... 10.00
For the hearing of a reference to the Registrar, for each day	{ From 10.00 to..... 25.00
NOTE.—When the same practitioner acts as both counsel and solicitor he may, for any proceeding in which a counsel's fee might be allowed, charge such fee in lieu of a solicitor's fee.	

IX. BY SHORTHAND WRITERS.

For taking down and transcribing the evidence, certifying the transcript and transmitting the same to the registrar, and supplying three copies thereof to the registrar, per folio.....	\$.20
If for any reason the evidence is not required to be transcribed, for each hour occupied by the examination	1.50
Such fee shall in the first instance be paid to the registrar for the shorthand writer by the party calling the witness.	
If any such fee is not paid by the party liable therefor it may be paid by any other party to the proceeding, and allowed as a necessary disbursement in the cause, or the judge may make such order in respect of such evidence and the disposal of the action or proceeding as to him seems just.	
NOTE.—If evidence is taken down by a shorthand writer no fee for taking down and certifying to such evidence shall be allowed to the registrar or commissioner.	

X. BY WITNESSES.

To witness residing not more than three miles from the place to which summoned, per day.....	\$ 1.00
--	---------

To witnesses residing over three miles from such place.....	1.25
Barristers and attorneys and solicitors, physicians and surgeons, when called upon to give evidence in consequence of any pro- fessional service rendered by them, or to give opinions, per day	5.00
Engineers and surveyors, when called upon to give evidence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, per day.....	5.00
If the witnesses attend in one cause only, they will be entitled to the full allowance.	
If they attend in more than one cause they will be entitled to a proportionate part in each cause only.	
The travelling expenses of witnesses over ten miles, shall be allowed according to the sums reasonably and actually paid, but in no case shall exceed ten cents per mile travelled.	

ADMIRALTY RULES.

Since the 10th day of June, 1893, the date at which the Admiralty Rules came in force in Canada, the following General Order of the 12th day of December, 1894, has been made by the judge of the Exchequer Court of Canada and was duly brought into force by publication in the *Canada Gazette*, on the fifth day of January, 1895.

The General Order reads as follows, viz.:—

IN THE EXCHEQUER COURT OF CANADA.

GENERAL ORDER.

In pursuance of the provisions of The Colonial Courts of Admiralty Act, 1890, and of The Admiralty Act, 1891 (Canada), it is ordered that the following additional rules of court for regulating the practice and procedure (including fees and costs) of the Exchequer Court of Canada in the exercise of its jurisdiction, powers and authority as a Court of Admiralty, shall be in force in the said court.

Part 2 of the appendix to the General Rules and Orders relating to the practice and procedure in admiralty cases in the Exchequer Court of Canada, is hereby amended by adding thereto the following paragraphs:—

BY THE SURROGATE JUDGES.

Surrogate judges shall be entitled to receive the following fees from the party making any application to them:

On administering any oath or declaration.....	\$.50
Upon every ex parte application.....	2.00
Or if engaged more than one hour, per hour.....	3.00
Not to exceed in all upon any one application.....	7.50
Upon every contested application, per hour.....	4.00
Not to exceed in all upon one application.....	10.00
Such fees shall be allowed by the registrar upon the certificate of the surrogate judge, and may be recoverable by the party paying them as other taxable costs in the discretion of the judge, or surrogate judge as the case may be.	

BY CRIER.

For any order employed at the trial of an action under the judge's direction, per diem.....	\$ 1.50
The fee to be paid by the plaintiff in the case and to be allowed by the registrar as part of the taxable costs.	
In the Exchequer Court costs may be awarded against the Crown, subject to provisions of the rules, however, that no execution	

shall issue on a judgment or order for payment of money by the Crown.

Costs of and incident to all proceedings in the Exchequer Court, shall be in the discretion of the court or a judge and shall follow the event, unless otherwise ordered. The court or a judge may also direct the payment of a fixed or lump sum in lieu of taxed costs. All costs between party and party shall be taxed pursuant to the above tariff, and such taxation shall be by the registrar in person, and shall not be delegated to any other officer of the court, except in the unavoidable absence of the registrar from illness, or any other cause, when the taxation shall be before the officer appointed by the court to perform the registrar's duties in his necessary absence.

If an order on any petition, reference or proceeding against the crown on application by or on behalf of the Attorney-General of Canada is made for security for costs, and the suppliant, claimant or petitioner, fails to give security to the satisfaction of the judge, for the payment of costs in the event of the judgment being against such suppliant, claimant, or petitioner, or of its not exceeding the sum tendered by the Crown, all further proceedings on such petition, reference or proceeding, shall be stayed until otherwise ordered.

The Crown cannot be called upon to furnish security for costs, although it may demand security from the subject.

1
1
1:
1:
1:
14
15

16.

17.

PART IV.

ONTARIO TARIFF A.

TABLE OF COSTS IN THE HIGH COURT OF JUSTICE, COURT OF APPEAL AND COUNTY COURTS.

GENERAL ALLOWANCE FOR PLAINTIFFS AND DEFENDANTS, AS
WELL BETWEEN SOLICITOR AND CLIENT AS
BETWEEN PARTY AND PARTY.

	High Court and Court of Appeal.	County Court.
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 sum- mons issued	2.00	1.00

WRITS.

5. All writs, except writs of execution, subpoenas, and concurrent and renewed writs.....	\$ 2.00	\$1.00
6. Concurrent writ.....	1.50	.75
7. Renewed writ (except writs of execution).....	1.50	.75
8. All writs, except subpoenas, if over four folios, for every folio.....	.20	.20
9. Subpoena, <i>ad testificandum</i>	1.00	.50
10. Subpoena, <i>duces tecum</i>	1.25	.75
11. All subpoenas if over four folios, additional per folio	.15	.15
12. Notice of writ for service, in lieu of writ out of jurisdiction and copy	1.00	.75
13. <i>Alias</i> and subsequent writs to be allowed as originals	1.00	
14. Special indorsement of writ of summons.....	1.00	.75
15. Issuing 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 attendance, 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	\$.75
If over four folios, for every additional folio....	.10	.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	.50

High Court
and Court
of Appeal. County Court.

- | | | |
|---|-----|-----|
| 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..... | .13 | .10 |
| 19. For service of writ out of jurisdiction | | |
| (Such allowance as the taxing officer shall see fit.) | | |
| (Such allowance as the taxing officer or C.C. judge shall see fit.) | | |

INSTRUCTIONS AFTER COMMENCEMENT OF ACTION.

- | | | |
|--|---------|--------|
| 20. To counsel in special matters | \$ 1.00 | \$.50 |
| 21. To counsel in common matters..... | .50 | .25 |
| 22. For special affidavits when allowed by the taxing officer (or county court clerk in C.C. cases)..... | 1.00 | .50 |
| 23. For special affidavit on production when allowed by the taxing officer..... | 2.00 | 1.00 |
| 24. For pleadings in action and reasons for and against appeal..... | 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-claim | 2.00 | 1.00 |
| 27. To amend any pleadings when the amendment is proper..... | 2.00 | 1.00 |
| 28. For confession of defence under Rule 295 | 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 | .50 |
| 33. For adding parties in consequence of marriage, death, assignment, etc | 1.00 | .50 |
| 34. For issue of fact, by consent or judge's order.. | 2.00 | 1.00 |
| 35. To defend added parties after death of original party..... | 2.00 | 1.00 |
| 36. For confession of action in ejectment as to the whole or in part | 1.00 | .50 |
| 37. To strike or reduce special jury | 2.00 | 1.00 |
| 38. For such other important step or proceeding in the suit as the taxing officer is satisfied warrants such a charge..... | 2.00 | 1.00 |

DRAWING PLEADINGS, ETC.

- | | | |
|---|---------|--------|
| 39. Statement of claim..... | \$ 2.00 | \$1.00 |
| 40. If above ten folios, for every folio above ten, in addition | .20 | .15 |
| 41. Statement of defence, if five folios or under | 2.00 | 1.00 |
| 42. Counter-claim, if five folios or under..... | 2.00 | 1.00 |
| 43. Statement of defence or counter-claim, if above five folios..... | | |
| For every folio in addition..... | .20 | .20 |

High Court
and Court
of Appeal. County Court.

44. Reply and other pleadings for or on behalf of plaintiff or defendant	2.00	1.00
45. If above five folios, for each additional folio....	.20	.15
46. Petition, per folio.....	.20	.20
47. Issue for trial of facts by agreement or order, for every folio	.20	.20
48. 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.		
49. Special case, per folio.....	.20	.20
50. Drawing interrogatories or answers for any purposes required by law, per folio	.20	.20
51. Drawing reasons for or against appeal, five folios or under.....	2.00	1.00
For each folio above five	.20	.15
52. The above charges do not include engrossing or copies to file or serve.		
53. Taking <i>cognovit</i> and entering judgment thereon when there has been no previous proceeding and the true debt does not exceed \$200	8.00	8.00
54. For same services when the true debt exceeds \$200.....	12.00	10.00
55. Drawing and engrossing <i>cognovit</i> and attending execution when there have been previous proceedings	2.00	1.00
56. Preparing bond to secure costs, bond on any appeal to secure costs or damages or any recognizance (to include drawing affidavits and all attendances in connection with the preparation thereof).....	5.00	3.00

COPIES.

57. Of pleadings, brief and other documents, when no other provision is made, and copies properly allowable.....	\$.10	\$.10
58. Certified copy of pleadings or issue for use of judge	1.50	.75
59. For every folio above fifteen, per folio.....	.10	.10
60. Of special and common orders, per folio.....	.10	.10
61. Of depositions properly taken for use in court or chambers—in the discretion of the taxing officer, not exceeding the amount payable to a special examiner for copies.....		

NOTICES, INCLUDING ONE COPY.

62. Notice in action for recovery of land, to defend for part of premises; not to be allowed when defence limited by appearance.....	\$ 1.00	\$.50
63. Notice of plaintiff's or defendant's title in action for recovery of land.....	1.00	.50
64. Notice of admission of right and denial of ouster by joint tenant.....	1.00	
65. Notice of confession of action in action for recovery of land as to whole or part.....	.50	
66. Notice in lieu of statement of claim.....	.50	.25

	High Court and Court of Appeal. County Court.	
67. Notice to produce and admit, each.....	.50	.25
68. Notice by defendant to third party under Rule 209 (not to include copy of statement of claim).....	1.00	.50
69. In any case where any of the above exceed two folios, for every additional folio.....	.20	.20
For every additional folio.....	.10	
For every additional copy, per folio.....	.10	
70. Particulars of claim, demand, set-off or counter-claim, five folios or under.....	2.00	.75
If exceeding five folios, per folio in addition..	.20	.15
71. Notice of motion in court or chambers, draw- ing and copy to serve, per folio.....	.30	.15
72. Notice of appearance when entered after time limited by writ, and notice given forthwith but not otherwise.....	.50	.25
73. Notice of entry of appearance in action for recovery of land by person not named in the writ.....	.50	.25
74. Notice to sheriff to discharge prisoner out of custody.....	.50	.40
75. Notice of discontinuance.....	.50	.25
76. Notice of disputing amount of claim.....	.50	.25
77. Notice of trial or assessment.....	.50	.25
78. Demand of residence of plaintiff.....	.50	.25
79. Demand of names of partners.....	.50	.25
80. Notice of setting down on motion for judgment or on further directions.....	.50	.25
81. Notice of taxation or appointment to tax.....	.50	.25
82. Notice of filing affidavits, when required (only one notice to be allowed for a set of affidavits filed or which ought to be filed together).....	.50	.25
83. All common notices, demands or appointments not specified.....	.50	.25
84. Every additional copy, per folio.....	.10	.10
85. (In no case less than fifty cents to be taxed for notice, demand or appointment and one copy). (Where necessary to be served and served on more than one party, the extra services to be allowed.)		

PERUSALS.

86. Of each of the pleadings as defined by the Judicature Act, 1895, including reasons for and against the appeal.....	\$ 1.00	\$.50
87. 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
88. 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.....		.50
89. Of affidavits and exhibits of a party adverse in interest, filed or produced on any application, where perusal is necessary, if twenty folios or under.....	1.00	.50
On the higher scale, per folio, over twenty folios (Not in any case to exceed the sum of \$5.00.)	.05	

ATTENDANCES.

High Court
and Court
of Appeal. County Court.

90. Necessary attendances consequent on the service of a notice to produce or admit, or an inspection of documents when produced under order including making admission, altogether	\$ 1.00	\$.50
To be increased by taxing officer or County Court clerk, in cases of a specially difficult and important nature, to	2.00	1.00
91. Attending on return of motion, in Chambers....	1.00	.50
To be increased in the discretion of the taxing officer, or in County Court cases of the judge to ..	2.00	1.50
92. On consultation, or conference, with counsel, in special difficult and important matters, in the discretion of the taxing officer in Toronto, or in County Court 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 County Court cases in the discretion of the County Court judge, to not exceeding.....		3.00
No special attendance to be allowed to a solicitor on proceedings on which he also appears as counsel.		
93. 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
In no case to exceed per day (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 clerk of the Crown, clerk of assize, C. C. clerk, or other officer of the court present at the time, or proved by affidavit)	10.00	5.00
94. To hear judgment when not given on close of argument	2.00	1.00
95. To hear judgment when cause on list for judgment, but judgment not given.....	2.00	1.00
96. On taxation of costs.....		1.00
97. On taxation of costs, per hour	1.00	
98. On revision, per hour, when attendance required by taxing officer, or revision had on order.....	1.00	.50
99. On revision by county court judge on appeal....		.50
100. To obtain or give undertaking to appear, when service accepted by a solicitor	1.00	.5
101. Attendance to file, or serve.....	.50	.250
102. Attendance on warrant, or appointment, of master, registrar, examiner, referee, or county court clerk, per hour.....	1.00	.50
To be increased in the discretion of the taxing officer in Toronto, or, in C.C. cases, of the C.C. judge to not exceeding, per hour.....	2.00	1.00
103. Attendance on master or registrar (or county court clerk) in special matters, per hour.....	1.00	.50

High Court
and Court
of Appeal. County Court.

104. Attending to search bond.....	.50	.25
105. Attending to search and perusing bond.....	1.00	.50
106. Every other necessary attendance.....	.50	.25
107. On important points and matters, requiring the attendance of counsel, and when counsel attends, before a master, examiner, referee, registrar, inspector of titles, or county clerk, a counsel fee may be allowed by a taxing officer in Toronto (or the judge in county court cases) in lieu of fees for attendance; such counsel fee in county court cases not to exceed \$5.00.		

BRIEFS.

108. For drawing briefs, five folios or under.....	\$2.00	\$ 1.00
109. For drawing briefs, for each folio above five ..	.10	.10
110. For drawing brief, per folio, for original and necessary matter	.20	.20
111. Copy of documents, other than pleadings, per folio	.10	.10
112. Copy of brief for second counsel, when fee taxed to him, per folio	.10	

COURT FEES.

113. 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 (as formerly fixed by Rule 216 of the Con. Rules of 1888, or fixed by R.S.O. 1887, ch. 47, sec. 12, as the case may be) and the first day of the following sittings so fixed.....	\$1.00	\$.50
114. Fee on certified copy of pleadings for judge ...	1.00	.50
115. Fee on every order or judgment to the party obtaining the same	1.00	.50
116. Fee on præcipe judgment in mortgage cases..	4.00	2.00

AFFIDAVITS.

117. Drawing affidavits, per folio	\$.20	\$.20
118. Engrossing same to have sworn, per folio.....	.10	.10
119. Copies of affidavits, per folio, when necessary..	.10	.10
120. 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	.75
121. The solicitor for preparing each exhibit.....	.10	.10

DEFENDANTS.

		High Court and Court of Appeal.	County Court.
122.	Appearance including attending to enter.....	\$1.00	\$.50
	For each additional defendant.....	.20	.10
123.	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	.50

JUDGMENTS OF ORDERS.

124.	Drawing minutes of judgments, or order, per folio, when prepared by solicitor, under direc- tion of officer settling the same (or in C. C. cases of the C. C. judge).....	\$1.00	\$.50
125.	Judgment for non-appearance on specially indorsed writs, and in action for recovery of land	1.00	.50
126.	For every hour's attendance before proper officer on settling or passing minutes..... 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	1.00 5.00	.50 2.50

LETTERS.

127.	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	\$.50	\$.25
128.	Common letters, including necessary agency letters	.50	.25
129.	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
130.	Postages—the amount actually disbursed.		
131.	For correspondence during the progress of an appeal to the Court of Appeal a reason- able sum, in the discretion of the taxing officer, may be allowed, not exceeding	5.00	2.00

SALES BY MASTERS OR AUCTIONEER; OR REAL REPRESENTA-
TIVES IN PARTITION SUITS.

132.	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.....	.20	.15
	(To be increased in the discretion of the master or in county court cases, the county court judge, to a sum not exceeding ten dollars, when special information has been procured for the purpose of sale		
133.	Copies for printing, per folio	.10	.10

	High Court and Court of Appeal. County Court.	
134. Each necessary attendance on printer	.50	.25
135. Attending and making arrangements with auctioneer.....	1.00	.50
136. Revising proof.....	1.00	.50
137. Fee on conducting sale when held where solicitor resides	5.00	3.00
138. If solicitor is engaged for more than three hours, for every hour beyond that time.....	1.00	.75
139. Fee on conducting the same 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 mas- ter 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 sale, if, in his opinion, it is necessary and proper that he should attend.		

MISCELLANEOUS.

140. 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.		
141. For each folio over ten	.20	.20
142. 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 the county court in county court cases).		
143. Drawing bill of costs as between party and party for taxation (including engrossing and copy for taxing officer or county court clerk), per folio.....	.30	.20
144. Copy per folio, to serve	.10	.10
145. For maps and plans necessary for and used at the trial, a reasonable sum in the discretion of the taxing officer (Con. Rule 1213.)		
146. Fee on motion of course, or on motion in matters not special.....	2.00	1.00
147. On special ex parte motion or application to the court (only one counsel fee to be taxed)..	5.00	2.00
To be increased in the discretion of the taxing officer in Toronto (or judge of County Court in County Court cases, who shall mark amount to be taxed on order of court, if any, before taxation), to.....		
148. Fee on argument on supporting or opposing application to the court, or argument in the High Court of special case, or appeal.....	10.00	5.00

High Court
and Court
of Appeal. County Court.

In High Court and Court of Appeal to be increased in the discretion of the taxing officer in Toronto, but no more than two counsel fees to be allowed in any case.		
In County Court to be increased in the discretion of the judge to.....		10.00
149. On argument of appeal in the Court of Appeal in the discretion of taxing officer at Toronto, but no more than two counsel fees to be allowed in any case. (Rules, 1 Jan. 1896, 1504, amended).		
150. On argument in County Court appeals in the discretion of the taxing officer at Toronto, not exceeding \$25. (Rules, 1 Jan. 1896, 1504).		
151. On consultations	5.00	2.00
152. Fee with brief, on assessment	10.00	6.00
153. Fee with brief at trial.....	10.00	10.00
In High Court cases to be increased by the taxing officer in his discretion to a sum not exceeding \$40 to a senior counsel, and \$20 to a 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.		
In County Court cases to be increased by the judge in actions of a special or important nature falling within the increased jurisdiction conferred by 59 Vict., c. 19, upon County Courts (on notice to the opposite party) to a sum not exceeding		50.00
In County Court cases to be increased by the judge in actions of a special or important nature not falling within the increased jurisdiction aforesaid (on notice to the opposite party) to a sum not exceeding.....		25.00
(In County Court 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 counsels attend.....	2.00	1.00
To be increased in the discretion of the taxing officer in cases in the High Court or Court of Appeal to a sum not exceeding.....	5.00	
To be increased in the discretion of the judge in County Court cases to a sum not exceeding..		5.00
Subject to further increase in the discretion of the taxing officer at Toronto.		
Provided that the Master in Chambers may in cases before him recommend a fee.		

High Court
and Court
of Appeal. County Court.

155. On attendance on reference to Master, County Court clerk, 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 the County Court clerk in County Court cases, not exceeding		10.00
156. 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 County Court clerk in County Court cases, to an amount not exceeding	5.00	2.00
157. On settling pleadings, interrogatories, special cases, issues or petitions, and advising on evidence in contested cases, in the discretion of the taxing officer, or County Court clerk in County Court cases, not exceeding	5.00	3.00
158. On settling the appeal case and reasons for or against appeal	5.00	2.00
To be increased in the discretion of the taxing officer at Toronto in special and important matters to a sum not exceeding	20.00	5.00

GENERAL.

159. Where 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.
160. 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.
161. 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.
162. 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 officer in Toronto, but this shall not prevent an appeal from a taxing officer.
163. 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.
164. On appeals to the Court of Appeal and in County Court appeals, where the fees are not above provided for, the same fees and allow-

ances shall be taxed as are allowed for similar services in the High Court or County Court as the case may be.

165. 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.
166. Where a taxation is between solicitor and client on a reference made under the Act respecting Solicitors (R.S.O. 1887, c. 147) and Rules 1184 to 1188, the officer to whom the matter is referred may exercise all the powers of the taxing officer at Toronto in respect to increasing allowances made by this tariff.

ONTARIO TARIFF B.

TARIFF OF DISBURSEMENTS.

Except where otherwise expressly provided by statute or rule of court, 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.)

REGISTRAR OF COURT OF APPEAL.

	High Court and Court of Appeal. County Court.
1. Setting down for argument	\$4.00
2. On every judgment or order of the court passed and entered	2.00
3. Certificate on discharging appeal.....	.90
4. On every order in chambers.....	.50
5. For other services the like charges as are pay- able in the High Court for similar services.	

MASTER IN ORDINARY, LOCAL MASTERS, AND OFFICIALS AND SPECIAL REFEREES.

6. Filing and entering judgment or order in master's book.....	\$.20	.10
7. Every warrant or appointment	.50	.10
8. Administering oath or taking affirmation.....	.20	.20
9. Marking every exhibit.....	.20	.10
10. Drawing depositions (in infancy matters only), reports, or orders, per folio, to include time occupied.....	.20	.20
11. Fair copy, per folio (when necessary)	.10	.10
12. Copies of evidence supplied to parties or for the use of the judges—such sums as may be authorized under any order in council.		

	High Court and Court of Appeal. County Court.	
13. Copies of evidence not provided for by any such order in council, and copies of papers given out when required, per folio.....	.10	.10
14. Every attendance upon any proceeding or enlargement thereof or selling property.....	.50	.50
15. For each additional hour	.50	.50
16. Fee on report signed (only one to be allowed in each action or matter on first report).....	2.00	Nil.
17. Every certificate, if not longer than two folios	.50	.20
18. For each folio over two.....	.20	Nil.
19. Filing each paper or subsequent order.....	.10	.10
20. Taxing costs, per hour	1.00	
21. Taxing costs, including attendance.....		.80
22. Making up and forwarding depositions, bills of costs and proceedings in master's office.....	.50	.10
23. Every special attendance out of office within two miles, per hour occupied by reference or sale	2.00	.50
24. Every additional mile above two for travelling expenses.....	.20	.10
25. Every order in chambers	.50	.20
26. Searching files in office.....		.10
27. Do. on higher scale same allowance as to deputy registrar.		

CLERK OF THE PROCESS, CLERK OF THE CROWN AND PLEAS,
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.

28. Every writ.....	\$.50	\$.50
29. Every concurrent, alias, pluries or renewed writ.....	.50	.40

ADDITIONAL ON EVERY WRIT BY STATUTE.

30. Every appearance entered and filing memorandum thereof.....	.20	.15
31. Every appearance, each defendant after the first	.10	.10
32. Filing every affidavit, writ or other proceeding	.10	.10
33. Amending every writ or other proceeding	.30	.25
34. Upon payment of money into court where the amount is upwards of \$10	.30	.30
No sum to be payable in respect of payments into court upon mortgages or securities held by the accountant (Rule 18, Feb., 1892, 1271).		
35. Upon payment of money out of court where the amount is upwards of \$10 (Rules of 18 Feb., 1892, 1271)	.30	.30
36. Passing and certifying record (payable in cash to deputy clerks of the crown, local registrars and deputy registrars not paid by salary).....	1.00	.50

37. Entering action for trial or assessment (including High Court cases entered for trial at County Court)	2.00	.50
(The foregoing 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).		
Additional fee in High Court cases payable by statute for the shorthand reporter's fund, payable in cash	1.00	
Additional fee by statute in jury cases	3.00	1.50
38. On setting down on the paper for argument every special case	.20	.20
Additional fee payable by statute	.30	
39. Setting down a cause for any other purpose	.50	.20
40. Subpoena, including filing præcipe	.50	.20
Additional fee by statute	.50	
41. Every reference, inquiry, examination, or other special matter for every meeting not exceeding one hour, not including the settlement of minutes of a judgment nor the allowance or disallowance of a bond	1.00	.75
42. Every reference, inquiry, examination, or other special matter for every additional hour or less	1.00	.50
43. Fee on report made on such reference, etc.	1.00	1.00
44. Attending on opening commission	1.00	.50
45. Every certificate made evidence by law, or required by the practice, including any necessary search	.50	.50
Additional fee where seal is required	.50	
46. Every certificate for registration	.50	.20
Additional fee for seal of court or office	.50	
47. Entering certificate of title or conveyance, per folio	.10	.10
48. Every ordinary order	.30	.30
Additional fee by statute	.20	
* 49. Every special order not exceeding six folios, per folio	.20	.20
Additional fee by statute	.20	
50. Every chamber order	.50	.50
51. Every interlocutory judgment or judgment by default	.50	.30
Additional fee by statute	.60	
52. Every final judgment otherwise than judgment by default	.50	.50
Additional fee by statute	.60	
53. Taxing bill of costs, and giving allocatur or certificate	.70	.80
Additional fee by statute	.20	
54. Entering order when necessary, per folio	.10	.10
55. Taking account on præcipe judgment	1.00	.50
56. Exemplification or office or other copy of papers or proceedings required to be given out, per folio, besides certificate and seal when required	.10	.10
Additional fee by statute for seal of court	.50	
57. Examining and authenticating papers when copy prepared by solicitor—every three folios	.05	.05
58. Every search, if within one year	.10	.10
59. Every search of over one year and within two		

urt.

AS,

years.....	.20	.10
60. Every search, if over two years, or a general search.....	.50	.20
61. Every affidavit, affirmation, etc., taken before them.....	.20	.20
62. Every allowance and justification of bail.....	.30	
63. Taking recognizance of bail.....	.30	
64. Entering satisfaction on record, and filing satisfaction piece, including any necessary search.....	.50	.30
65. Every commission for the examination of witnesses.....	1.00	.50
66. Making up and forwarding papers, including bills of costs.....	.50	.10
67. Every commission for taking bail and affidavit (to be on parchment).....	2.00	
68. Entering <i>exoneretur</i> on bail piece.....	.30	.20
69. Making up records of conviction or of acquittal, per folio.....	.10	
70. Entering and docketing judgment.....	.50	
71. For making the entry required in cognovit book.....	.50	.50

CLERKS OF THE COUNTY COURTS (ADDITIONAL).

72. Every judgment pronounced, jury discharged, record withdrawn, or order or reference at the trial.....	\$.50	
73. Drawing appointments made by the judge.....	.25	
74. Every appointment for taxation of costs or otherwise, made by County Court clerk.....	.10	
75. For every jury sworn.....	1.00	
76. Every enlargement on application to the judge in chambers, including search, if marked by the clerk.....	.15	

DEPUTY REGISTRARS NOT PAID BY SALARY.

(Additional only so long as the present officers retain office and are not paid by salary).

77. Marking every exhibit produced on the examination of witnesses.....	\$.20	
78. Swearing each witness.....	.20	
79. Attending on inspection of documents, produced with affidavits on production, per hour.....	1.00	

SPECIAL EXAMINER.

80. Every appointment.....	.50	\$.10
81. Administering oath or taking affirmation.....	.20	.20
82. Marking every exhibit.....	.20	.20
83. Taking depositions, per hour.....	1.50	.75
84. Fair copy for solicitor, per folio (when required).....	.10	.10
85. Every attendance out of office when within two miles.....	2.00	.50
86. Every attendance over two miles out of office, extra per mile.....	.20	.10
87. Every certificate.....	.50	.25
88. Making up and forwarding answers, depositions, etc., including filing preceipe.....	.50	.25
89. For every attendance upon an appointment when solicitor or witnesses do not attend and examiner not previously notified.....	1.00	.50

REFEREE OR TITLES.

90. Every warrant or appointment in contested cases.....	30	
91. Administering oath or taking affirmation.....	20	
92. Marking every exhibit.....	10	
93. Drawing depositions, reports or orders, advertisements and notices, per folio.....	20	
94. Copy of papers given out when required, per folio.....	10	
95. Every attendance upon a reference in a contested case.....	1.00	
96. For each additional hour after the first.....	1.00	
97. Every certificate not being the certificate of title.....	.50	
98. Filing each paper.....	.10	
99. Taxing costs, including attendance.....	1.00	
100. Making up and forwarding papers to the inspector of titles.....	.30	
101. Every special attendance out of office within two miles.....	1.00	
102. Every additional mile above two.....	.20	
103. Reading affidavit, per folio.....	.02	
104. Matter added, per folio.....	.20	
105. Searching files in office.....	.20	
106. Every deed in the chain of title other than satisfied mortgages.....	.50	
107. Where title is claimed by possession only.....	4.00	
108. Drawing and engrossing certificate of title, or conveyance in duplicate.....	4.00	
109. All necessary sums paid for postage or transmission of papers.		

INSPECTOR OF TITLES.

110. On entering petition, for all correspondence, examination of the title, drawing and engrossing certificate or conveyance, and every other matter or thing done under the petition (Con. Rule 1036).....	8.00	
--	------	--

REAL REPRESENTATIVE.

111. 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.

CRIER.

112. Calling each case, with or without a jury.....	.60	.50
113. Swearing each witness or constable.....	.15	.15

COMMISSIONERS.

114. For taking every affidavit.....	.20	.20
115. For taking every recognizance of bail.....	.50	.50
116. For marking every exhibit.....	.10	.10

ALLOWANCE TO WITNESSES.

117. To witnesses residing within three miles of the court house, per diem	\$1.00	\$1.00
118. To witnesses residing over three miles from the court house	1.25	1.25
119. 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 opinion, per diem	4.00	4.00
120. 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
121. 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.		
122. The travelling expenses of witnesses over three miles shall be allowed, according to the sums reasonable 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.

ONTARIO, TARIFF C. FEES OF SHERIFFS AND CORONERS, IN CIVIL MATTERS.

FEES PAYABLE TO SHERIFFS AND CORONERS.

GENERAL MATTERS.

	Higher Scale, High Court and Court of Appeal.	County Courts.
1. Receiving, filing, entering and indorsing all writs, pleadings, rules, notices, or other papers, each	\$.25	\$.10
2. Return of all process and writs, except subpoenas	.50	.25
3. Return of pleadings, rules, notices, or other papers	.25	.15
4. Every search not being by a party to a cause or his solicitor	.30	.30
5. 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)	.75	.75
6. Where a certificate respecting executions, against lands is required, the sheriff, if so re-		

	Higher Scale, High Court and Court of Appeal.	County Courts.
quested, 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 than four dollars, shall be charged or collected in respect of such certificate. (50 Vict., sec. 5.)		
7. Every warrant to execute any process, mesne or final, directed to the sheriff, when given to a bailiff	.75	.50
8. Every jury sworn or cause tried before a judge	1.00	.80
9. Every letter written (including copy) required by party or his solicitor respecting writs of process, when postage prepaid	.50	.30
10. Drawing every affidavit when necessary and prepared by sheriff.....	.25	.25

SERVICE OF PROCESS AND PAPERS.

11. 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 County Court scale, including affidavit of service.....	\$1.50	\$1.00
12. Serving subpoenas, orders, notices, or other papers (besides mileage).....	.75	.50
13. For each additional party served.....	.50	.25
14. Actual and necessary mileage from the court house to the place where service of any process, paper or proceeding is made, per mile.....	.13	.13

ARREST AND ATTACHMENT.

15. Arrest when amount does not exceed \$200.....	\$2.00	\$2.00
Arrest when amount does not exceed \$400.....	4.00	4.00
Arrest when amount over \$400.....	6.00	
16. Bail bond or bond to the limits.....	2.00	1.00
17. Assignment of the same.....	1.00	.25
18. Mileage going to arrest when made, per mile....	.13	.13
Mileage conveying party arrested from place of arrest to the gaol, per mile	.13	.13
19. Bringing up prisoner on attachment or habeas corpus, besides travel at 20c. per mile.....	1.50	1.00
20. Certificate of surrender by sureties under Rule 1049.....	1.00	1.00

ABSCONDING DEBTORS.

21. Seizing estate and effects on attachment against an absconding debtor.....	\$3.00	\$1.50
22. Valuers, each.....	1.00	1.00
23. Removing or retaining property, reasonable and necessary disbursements and allowances to be made by the taxing officer, or in the County Court by order of the court or judge.		

	Higher Scale, High Court and Court of Appeal.	County Court.
24. Drawing bond to secure goods taken under an attachment against an absconding debtor, if prepared by sheriff.....	\$1.50	\$1.50

REPLEVIN.

25. Precept or warrant to bailiff in replevin.....	.75	.40
26. Drawing notice for service on defendant in replevin.....	.75	.40
27. Delivering goods to the party obtaining the order of replevin.....	3.00	1.50
28. For writ <i>de retorno habendo</i>	1.00	.50
29. On replevin bond.....	4.00	2.00
30. Assignment.....	1.00	.25
31. All necessary disbursements for the possession, care and removal of property taken in replevin.		

JURIES.

32. Notice of appointment for ballot of jury.....	\$.50	\$.25
33. Notice to clerk of peace of such appointment..	.50	.25
34. Fee on balloting special jury.....	5.00	2.50
35. Fee on striking special jury.....	2.50	1.25
36. Serving each special juror (besides mileage at 13 cents per mile).....	.50	.25
37. Returning panel of special jurors.....	1.00	.50
38. Keeping and checking pay list of special jurors' attendance in each case.....	1.00	1.00

SALES, POUNDAGE, ETC.

39. Poundage on executions and on attachments in the nature of executions, where the sum made does not exceed \$1,000 (in the C. C. on the sum made).....	6%	5%	54
40. 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%		57
41. Where the sum is \$4,000 and over, upon the excess over \$4,000 (in addition to the poundage allowed up to \$4,000)..... (Exclusive of mileage for going to seize and sell and of all disbursements necessarily incurred in the care and removal of property.)	1½%		58. 59. 60.
42. Schedule taken on execution, attachment or other process, including copy to defendant, not exceeding five folios.....	1.00	.50	61.
43. Each folio above five.....	.10	.10	62. 63. 64.
44. Drawing advertisements when required by law to be published in the official <i>Gazette</i> or other newspaper, or to be posted up in a court house, or other place, and transmitting same, in each suit.....	1.50	.75	65.
45. Every necessary notice of sale of goods (not more than three) in each suit.....	.75	.40	
46. Every notice of postponement of sale, in each suit.....	.25	.20	66.

Higher Scale,
High Court County
and Court Court.
of Appeal.

47. The sum actually disbursed for advertisements required by law to be inserted in the official *Gazette* or other newspaper.

SEQUESTRATION.

- | | | |
|---|---------|--------|
| 48. Upon seizure of estate and effects under writ of sequestration | \$ 4.00 | \$1.00 |
| 49. Schedule of goods taken in execution (including copy for defendant) if not exceeding five folios | 1.00 | .50 |
| 50. Each folio above five..... | .10 | .10 |
| 51. 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. | | |
| 52. (Poundage upon sequestration followed by sale and collection—as on other executions.) | | |

WRIT OF POSSESSION.

- | | | |
|---|---------|--------|
| 53. Executing writ of possession and serving and executing writ of restitution besides mileage. | \$ 6.00 | \$2.00 |
|---|---------|--------|

HAB. FAC. SEISIN.

- | | |
|--|---------|
| 54. Viewing lands, and instructing surveyors under Hab. Fac. Seisin, exclusive of mileage, per day | \$ 5.00 |
| 55. Giving possession, exclusive of mileage and assistance | 5.00 |
| 56. 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.

- | | |
|---|---------|
| 57. For travelling expenses to the sheriff, shewers and jury men — Expenses actually paid, if reasonable..... | |
| 58. Fee to the sheriff, when the distance does not exceed five miles from his office | \$ 2.00 |
| 59. When such distance exceeds five miles..... | 3.00 |
| 60. In case he is necessarily absent more than one day—then for each day after the first, a further fee of | 3.00 |
| 61. Fee to each of the shewers—the same as to the sheriff, calculating, etc. | |
| 62. Fee to each common jurymen, per diem..... | 1.00 |
| 63. Fee to each special jurymen, per diem | 2.00 |
| 64. Allowance for refreshment to the sheriff, shewers and jury men, common or special, each, per diem | 1.00 |
| 65. To the sheriff for summoning each jurymen whose residence is not more than five miles distant from the sheriff's office | .40 |
| 66. And for each whose residence exceeds five miles from sheriff's office..... | .60 |

PART V.

BRITISH COLUMBIA TARIFF OF COSTS.

(As provided by sec. 83 of the "Legal Professions Act, 1895.")

SCHEDULE 1.

WRITS, SUMMONSES AND WARRANTS.

1. Writ of summons for the commencement of any action.....	\$ 2.00
2. And for endorsement of claim, if special.....	1.00
3. Concurrent writ of summons.....	1.50
4. Renewal of a writ of summons.....	1.00
5. Notice of writ for service in lieu of writ out of jurisdiction.....	1.00
6. Writ of mandamus, or other prerogative writ.....	2.50
7. Or per folio.....	.25
8. Writ of subpoena <i>ad testificandum</i> for any number of witnesses named therein.....	1.50
9. Writ of subpoena, <i>duces tecum</i>	1.50
10. And if more than four folios, for each folio beyond four.....	.25
11. Writ of execution, or other writ to enforce judgment or order.....	1.50
12. And if more than four folios, for each folio beyond four.....	.25
13. Renewing writ of execution.....	2.50
14. Writ of <i>capias ad respondendum</i> or <i>ad satisfaciendum</i>	2.50
15. Alias or subsequent writs to be allowed as originals.....	
16. Amending any writ.....	1.00
17. These fees include all endorsements and copies or <i>præcipes</i> for the officer sealing them, and attendances to issue or seal, except where otherwise provided, but not the court fees.....	
18. Summons to attend at judge's chambers, including copy to file....	1.00
19. Or if special, at taxing officer's discretion, not to exceed.....	3.00
20. Each copy for the judge when required, or to serve.....	.50
21. Or per folio.....	.10
22. Originating summons for proceeding in chambers.....	2.50
23. And attending to get same sealed, and copies for service stamped	1.00
24. Copy for judge when required.....	.50
25. Or per folio.....	.10
26. Endorsing same and copies under Order LV., r. 17.....	1.00

SERVICES AND NOTICES.

27. Service, or filing in lieu of service, of any writ, summons, warrant, interrogatories, petition, order, or notice on a party who has not entered an appearance, and if not authorized to be served by post, where not otherwise provided for.....	\$ 1.00
28. If served at a distance of more than two miles from the nearest place of business or office of the solicitor serving the same, for each mile beyond such two miles therefrom.....	.25
29. Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent, or officer of the court, for correspondence in addition.....	1.25
30. Where more than one attendance is necessary to effect service, or	

to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit, not exceeding	1.50
31. For service out of the jurisdiction, such allowance is to be made as the taxing officer shall think fit.....	
32. Service where an appearance has been entered on the solicitor or party.....	1.00
33. Or if authorized by post.....	.50
34. Where any writ, order, or notice, or any two of them have or ought to be served together, only one fee for service is to be allowed	
In addition to the above fees the following allowances are to be made:	
35. Attending to serve summons to attend at judge's chambers, or before registrar, for each service, including copy.....	.50
36. As to notices in proceedings to wind up companies, for preparing notices to creditors to attend and receive debts, and to contributories to settle list of contributories, per folio.....	.25
37. And for preparing each notice to contributories to be served with a general order for a call, or for payment of a call, per folio.....	.25
38. And for drawing notice to be served on contributories or creditors, of a meeting, per folio	.25
39. For each copy of the last mentioned notice, to serve, per folio.....	.10
40. For preparing for service in any other cause or matter, each notice to creditors, to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal, interest and costs, if any, per folio	.25
41. For preparing notice to produce on the trial or hearing of an action, or notice to admit, or notice to inspect	1.00
42. If special or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio	.10
43. And for each copy, not exceeding per folio.....	.10
44. For preparing notice of motion.....	.75
45. Or per folio.....	.25
46. Copy for service	.25
47. Or for every folio exceeding three	.10
48. For preparing any necessary or proper notice not otherwise provided for, notice of discontinuance, demand for particulars, or any demand pursuant to Order VII., r.r. 1 and 2, including copy....	.50
49. Or if special and exceeding three folios, for preparing same, for each folio beyond three	.10
50. And for each copy for service, per folio, beyond three	.10
51. Copy and service of interrogatories and petitions, and all orders with necessary notices, if any, to accompany.....	.50
52. Or if exceeding five folios, per folio	.10
53. Of appearance when duly entered and notice given on the day of appearance, and not otherwise.....	.50
54. Except as otherwise provided, the allowances for service include copies to serve.....	
55. Where notice of filing affidavit is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.....	
56. In proceedings to wind up a company, the usual charges relating to printing of notices for service on contributories or creditors shall be allowed in lieu of copies for service, where the fee for copies would exceed the charge for printing.....	
57. Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment is not to be allowed, except in the case of a party not attending pursuant to appointment.....	

APPEARANCES.

58. Entering any appearance.....	\$ 1.00
59. For every appearance more than one person entered, or which ought to be entered, at one time, for every defendant beyond the first.....	.25
60. If a person appearing to a writ of summons to recover land, limits his defence by his memorandum of appearance, in addition to the above.....	1.00

INSTRUCTIONS.

61. To sue or defend.....	\$ 2.00
62. For statement of claim or special case, interpleader or other issue.....	3.00
63. For endorsement of writ of summons, when no further statement of claim.....	1.50
64. For originating summons.....	2.00
65. For defence or further defence.....	2.00
66. For counter-claim.....	2.00
67. For reply when defendant sets up a counter-claim.....	2.00
68. For reply or further reply in any other case, with or without joinder of issue.....	1.50
69. For confession of defence.....	1.50
70. For joinder of issue without other matter.....	1.00
71. For special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness.....	2.00
72. To amend any pleading, other than special endorsement on writ.....	1.00
73. To amend petition.....	1.00
74. For affidavit, other than affidavit of service.....	1.00
75. To appeal against order of court or judge, and to appear thereon.....	2.00
76. To oppose any such appeal and to appear thereon.....	2.00
77. To add parties by order of a court or a judge.....	1.00
78. For counsel to advise on evidence, when the evidence in chief is to be taken orally.....	1.50
79. For counsel to make or oppose any application to a court or a judge where no other brief.....	1.50
80. For brief on motion for, or to dissolve injunction, or for judgment..	2.00
81. For brief on hearing or trial of action upon notice of trial, or notice for judgment given, whether said trial be before a judge, with or without a jury, or before an official or special referee, or on trial of an issue of fact, before a judge, commissioner or referee, or on assessment of damages, when witnesses are examined or cross-examined, or on appeal or motion for new trial.....	2.00
82. Or not to exceed.....	5.00
83. For such brief and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to the circumstances of the case, the amount and questions involved, and to other allowances, if any, for attendances on witnesses and procuring evidence, not to exceed.....	25.00
84. For brief on examination of witnesses on commission.....	2.00
85. Or not to exceed.....	5.00
86. The fees for instructions for brief are to apply to a hearing on further consideration in court only where an order for accounts and inquiries was made without such hearing on trial, as above mentioned.....	
87. For brief on hearing of petition or originating summons, when, in the taxing officer's discretion, considered proper and necessary.....	1.50

88. To initiate or oppose any proceedings which, by virtue of any statute, may be made to the court or a judge in a summary manner.....	2.00
89. To examine opposite party, whether plaintiff, defendant or other person who may be ordered to be orally examined in an action for purposes of discovery.....	1.00
90. For confession of action in ejectment as to the whole or in part....	2.00
91. For particulars or further particulars.....	1.00
92. For bail or other bond in the course of an action, matter or proceeding, or recognizance.....	1.00

DRAWING PLEADINGS AND OTHER DOCUMENTS.

93. Statement of claim, including copy to keep, not exceeding ten folios.....	\$ 2.50	
94. Or per folio.....	.25	
95. Statement of defence, or defence and counter-claim, including copy to keep, not exceeding ten folios.....	2.00	
96. Or per folio.....	.25	
97. Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter (when necessary), and any other pleading (not being a petition or summons) and amendments to any pleading.....	1.50	
98. Or per folio.....	.25	
99. Particulars, breaches and objections, when required, and one copy to deliver.....	1.00	
100. Or such amount as the taxing officer shall think fit, not exceeding, per folio, including copy.....	.20	
101. If more than one copy to be delivered, for each other copy, per folio.....	.08	1
102. Special case, whether original or in an action, per folio.....	.25	1
103. Affidavits in answer to interrogatories, and other special affidavits, special petitions and interrogatories, per folio.....	.25	1
104. Affidavits of service, including copy and attendance to swear, where service is not effected by sheriff.....	1.00	
105. Brief on trial or hearing of action, issue of fact, assessment of damages, examination of parties or witnesses, special cases, and petition before the court or judge, commissioner, referee, examiner, or officer of the court, or on appeal, when necessary and proper in addition to pleadings, including necessary and proper observations.....	2.50	12 12
106. Or per folio, above ten folios, including briefing and a fair copy of pleadings, affidavits and necessary documents, subject to reduction by the taxing master for any unnecessary matter or being of unnecessary length.....	.10	13
107. Brief for second counsel when fee taxed to him, per folio.....	.10	13
108. Brief on further consideration, on every ten folios. Pleadings already briefed not to be charged.....	1.50	13 13
109. Accounts, statements, and other documents, for the judges' chambers, or before the registrar, not exceeding, per folio.....	.20	13
110. Advertisement, when required to be signed by the registrar, including fair copy, and attending for signature.....	1.50	13
111. Or per folio.....	.25	
112. Bill of costs, including copy for taxing officer.....	.50	
113. Or per folio.....	.15	
114. Appointment and obtaining judge's, registrar's, examiner's, referee's or commissioner's signature thereto, and one copy for service.....	1.00	139
115. Any necessary extra copies for service, each.....	.25	
116. Authority to receive money out of court.....	.25	

117. <i>Cognovit</i> and engrossing, and entering judgment thereon, where there have been no previous proceedings and the true debt does not exceed \$200	5.00
118. The same where the debt exceeds \$200	8.00
119. <i>Cognovit</i> or warrant of attorney and engrossing where there have been previous proceedings, and attending on execution	1.50
120. Judgment by default or final or interlocutory judgment, including duplicate to be filed	1.00
121. And for each folio beyond four folios	.25
122. Every copy to serve (when required) per folio	.10
123. Drawing consent of next friend to sue in his name, or of a guardian <i>ad litem</i> , including copy	1.00
124. Bail or other bond of recognizance	1.50
125. Drawing any other document not otherwise provided for, when necessary in the opinion of the taxing officer, per folio (including engrossing)	.20
126. Preceipe for any proceeding not otherwise provided for, including attendance	.25

COPIES.

127. Of pleadings and other documents, where no other provision is made, at, per folio	\$.10
128. Where—pursuant to rules of court, or when a saving of expense may be thereby effected, any pleading, special case, petition of right, appeal book or evidence is required to be printed, the solicitor for the party printing shall be allowed for copy for printer, except when made by an officer of the court, and no further copy necessary for the printer, at per folio	.10
129. And for examining the proof print, at, per folio	.05
130. And for printing, the amount actually or properly paid to the printer	
131. And where any part shall be properly printed in a foreign language or as a <i>fac simile</i> , or in any unusual or special manner, or where any alteration in the documents being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable	
132. These allowances are to include all attendances on the printer	
133. The solicitor for the party entitled to take printed copies shall be allowed for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor	
134. In addition to the allowances for printing and taking printed copies there shall be allowed for such printed copies as may be necessary or proper, for the following, but for no other purposes, <i>videlicet</i>	
135. Of any pleading for delivery to the opposite party or filing in default of appearance	
136. Of any special case for filing	
137. Of any petition for right of presentation, if presented in print, and service on any party	
138. Of any pleading, special case, petition of right, or evidence for the use of counsel in court, and in actions or matters when proper to be sent as a close copy for the use of the solicitor residing without the district, where the actions or matters are instituted, at, per folio	.10
139. Such additional allowances for printed copies for the court or judge, and for counsel, are not to be made where written, or type-written copies have been made previously to printing, and are not to be made, in any case, more than once in the progress of an action or matter	

140. Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown to and considered by the taxing officer	.25
141. Inserting amendments in a printed copy of any pleading, special case or petition of right, when not reprinted	.10
142. Or per folio	.50
143. Orders or rules generally, for service	.10
144. Or per folio, above three folios	1.00
145. Writs of summons and for other writs for service, including endorsements and notices thereon (if any), each	
146. On examination of a party to a suit or other person orally examined in an action for purposes of discovery, the sum actually paid to the stenographer and examiner for a copy thereof	

PERUSALS.

147. Of statement of claim, statement of defence, reply (not being a simple joinder of issue), and other pleading (not being a petition on a pending action or matter, or summons other than an originating summons) by the solicitor for the party to whom the same are delivered	\$ 1.00
148. Or per folio	.05
149. Of amendment of any such pleading in writing	1.00
150. Or per folio	.05
151. Of interrogatories to be answered by a party or his solicitor	1.00
152. Or per folio	.05
153. Of special case by the solicitor of any party except the one by whom it is prepared	1.00
154. Or per folio	.05
155. Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Order XVI., Rule 39, by the solicitor for the party served therewith, and in these several cases the perusal of the plaintiff's statement of claim is also to be allowed unless the solicitor has previously been allowed such perusal	1.00
156. Or per folio	.05
157. Of notice to produce upon trial or hearing of action or other proceeding, and notice to admit by the solicitor for the party served	1.00
158. Or per folio	.05
159. Or if to admit facts under Order XXXII., Rule 4, per folio	.25
160. Of affidavit in answer to interrogatories by the solicitor for the party interrogating, and of other special affidavits (other than affidavits of service) by the solicitor for the party against whom the same can be read, per folio	.05
161. Of exhibits when necessary, in the discretion of the taxing officer, per folio	.05
162. Of all other documents (except bills of costs), perusal of which is, in the opinion of the taxing officer, necessary, per folio	.05

ATTENDANCES.

163. To obtain consent of next friend to sue in his name, or of a guardian <i>ad litem</i>	\$ 1.00
164. To deliver or file in lieu of delivery, any pleading (not being a petition or summons), and a special case	.50
165. To inspect, or produce for inspection, documents pursuant to notice to admit	1.00
166. Or per hour	1.00
167. To examine and sign admissions	1.00

168. To inspect, or produce for inspection, documents referred to in any pleading or affidavit, pursuant to notice under Order XXXI., Rule 15.....	1.00
169. Or per hour.....	1.00
170. To inspect documents under order for affidavit of documents.....	1.00
171. Or per hour.....	1.00
172. To obtain or give any necessary or proper consent, including the drawing of any necessary memorandum thereof.....	1.00
173. Attending to serve any pleading or other document on solicitor of opposite party, and obtain admission of service.....	1.00
174. On receipt of any pleading, or other document, except letters, attending to examine and admit service.....	.50
175. On examination of witnesses before any judge, registrar, special examiner, commissioner, officer or other person, if without counsel, per hour.....	1.50
176. If with counsel per hour, not being a partner of counsel.....	1.00
177. On deponent to be sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories or other special affidavit, except affidavits of service.....	.75
178. On a summons at judge's chambers, per hour.....	1.00
179. Or according to circumstances, not to exceed.....	5.00
180. On judge to have order signed and approved.....	.50
181. On references, inquiries, or on taking accounts before judge, registrar, or other officer appointed for that purpose, if with counsel.....	1.50
182. If without counsel, in the discretion of the registrar.....	5.00
183. Or per hour.....	1.50
184. To file judge's or registrar's certificate, and get copy marked as office copy.....	1.00
185. On counsel with brief or other papers, not being a partner of solicitor.....	1.00
186. On consultation or conference with counsel, not being a partner of solicitor.....	5.00
187. To enter or set down action, special case, petition, or appeal for hearing or trial, including præcipe therefor.....	1.00
188. In court on motion of course, and on counsel and for order.....	1.50
189. On special case or special petition or application adjourned from judge's chambers, when likely to be heard.....	1.50
190. On hearing or trial of any case or matter or special motion or issue of fact in the town or city where the solicitor resides or carries on business, whether before a judge, with or without a jury, or commissioner, or referee, or on assessment of damages when heard or tried.....	5.00
191. Or in the discretion of the registrar, not to exceed, per day.....	10.00
192. Where not in the town or city where the solicitor resides or carries on business, for each day except Sundays he is necessarily absent.....	10.00
193. And actual reasonable travelling expenses.....	
194. Or if the solicitor has to attend on more than one trial or assessment at the same time and place, in each case.....	5.00
195. The expenses in such case to be ratably divided.....	
196. To hear judgment when same adjourned or reserved where solicitor not partner of counsel, or acting as counsel.....	2.00
197. To deliver papers, when required, for the use of a judge prior to the hearing.....	.50
198. On taxation of a bill of costs.....	1.50
199. Or according to circumstances, not to exceed, per day.....	5.00
200. When solicitor is partner of counsel engaged no fees allowed for attendance on counsel, or for other attendances when counsel present.....	

201. Unless the same shall necessarily occupy so much time that the taxing officer shall consider such amount inadequate, in which case he may allow such further fee, not exceeding \$5 per day.....	1.00
202. To obtain or give undertaking to appear.....	1.00
203. On printer to insert advertisement in <i>Gazette</i>	1.00
204. On printer to insert same in other papers, each paper.....	1.00
205. For preparing and drawing up an order made in proceedings to wind up company and attending to have same signed and entered.....	3.00
206. For engrossing every order, per folio.....	.15
207. To examine an abstract of title with deeds, or to examine deeds per hour, in an action or matter.....	1.00
208. To produce deeds for such purposes, per hour.....	1.50
209. Necessary attendances, including necessary attendances on client, solicitor or agent, not otherwise provided for.....	1.00
210. Special attendances on client in any action, matter or proceeding at discretion of taxing officer, not to exceed.....	5.00
211. To ballot jury.....	1.00
212. To strike or reduce special jury.....	1.00
213. To bespeak and for copy of examination taken for the purpose of discovery.....	1.00
214. Examine and take evidence of each witness, afterwards produced at the trial.....	1.50
215. Commissioner to take oaths or affidavits, for each oath, declaration, affirmation, or attestation upon honour.....	.35
216. The solicitor for preparing each exhibit.....	.25
217. The commissioner for marking each exhibit.....	.25

LETTERS.

218. To any defendant before action.....	\$.75
219. Any letters in action or matter and between solicitor and client, when necessary, each, with power to the taxing officer in both cases to increase the fee for special letters to an amount not exceeding.....	1.00
220. No letter is to be allowed in the course of an action or matter unless the taxing officer is satisfied of its necessity.....	
221. Necessary agency letters in the course of an action, matter or proceeding to be allowed on taxation between party and party as necessary attendances.....	
222. No fee shall be allowed for receiving letters from client or other parties or their solicitor or agent.....	
223. Postages, the amount actually and necessarily disbursed.....	

FEES TO COUNSEL.

224. Brief at trial or hearing, or before arbitrator, or upon appeal, or re-hearing before full court or on motion for new trial.....	\$35.00
(To be increased, except in the case of assessments by the taxing officer, in his discretion, to a sum not exceeding \$75 to senior counsel and \$40 to junior counsel; provided that more than one counsel fee shall not be allowed in any case not of an especially important nature, nor more than two in any case).....	
225. If the argument or trial last more than one day, for each subsequent day, not to exceed to senior counsel \$35, junior counsel \$25.....	
226. Brief on assessment appeal, appeal from County Court, injunction motions, argument of points of law, motion for judgment otherwise than under Order XIV., and brief on further directions and brief on examination of witnesses on commission.....	25.00

To be increased by the taxing officer to a sum not exceeding \$60 to senior counsel and \$30 to junior counsel, provided that more than one counsel fee shall not be allowed in any case not of an especially important nature.....

If the argument or trial last more than one day, for each subsequent day not to exceed senior counsel \$35, junior counsel \$25....
In all the above enumerated cases the judge shall have power to award higher fees than those mentioned.....

227.	Other court motions.....	10.00
228.	Chambers, where judge certifies for counsel, each time.....	5.00
	To be increased, in the discretion of the taxing master, to a sum not exceeding \$15.....	
229.	Consultations with client, solicitor, or counsel.....	5.00
	Or not to exceed \$10.....	
230.	On pleadings, petitions, special affidavits, special cases, interrogatories, cross-interrogatories, interpleader and garnishee issues, settling and revising, or not to exceed \$15.....	5.00
231.	Advising on evidence.....	5.00
	Or not to exceed \$25.....	
232.	On examinations for discovery and <i>de bene esse</i>	5.00
	If more than one hour, not to exceed \$25 per day.....	
233.	In all other cases where counsel is necessary.....	10.00
	A day means five hours.....	

COSTS OF THE DAY.

234.	Counsel fee to senior counsel.....	\$25.00
235.	Fee to junior counsel.....	15.00
236.	The registrar shall also allow all fees paid to witnesses and all such other costs and disbursements according to the ordinary scale respecting proceedings necessarily taken, and the benefit of which is lost by the adjournment.....	
	In actions under \$500 brought in the Supreme Court it shall be in the discretion of the judge who tries the case to award only county court costs.	
	In interlocutory proceedings it shall be lawful for the judge to fix a lump sum for costs.	
	In all districts outside Victoria, Vancouver, Nanaimo and New Westminster, where trials are held, it shall be lawful for the judge to fix a lump sum for costs of the whole proceedings.	

SCHEDULE NO. 2.

Scale of fees in non-contentious business, and in all matters not otherwise provided for in the Supreme Court rules.

1.	Instructions for any document, when necessary in the opinion of the taxing officer.....	\$ 1.75
2.	For fair copies and engrossing, per folio.....	.10
3.	For perusing, per folio.....	.5
4.	For drawing <i>lis pendens</i>	1.00
5.	Or per folio, exceeding three folios.....	.25
6.	For drawing certificate of judgment for registration.....	.50
7.	For drawing any document under seal.....	5.00
8.	Or per folio above ten folios.....	.25
9.	Letters, ordinary.....	.50
10.	Or if special, up to.....	2.00
11.	Circular letters.....	.25
12.	For drawing will or codicil, under three folios.....	5.00
13.	Or per folio, above three folios.....	.50

14. For drawing bill of sale in common forms hitherto used, including copy and affidavits, where consideration is \$1,000 or under.....	5.00
15. Or, if special, per folio exceeding ten folios.....	.25
16. For drawing certificate of commencement of action when required to be filled in pursuant to statute.....	1.00
17. Or per folio, exceeding three folios.....	.25
18. For drawing power of attorney.....	5.00
19. Or per folio, exceeding ten folios.....	.50
20. For drawing application to register and copy.....	1.00
21. For drawing any deed, not otherwise provided for, per folio.....	.25
22. For drawing any document, not otherwise provided for, per folio.....	.10

ATTENDANCES.

23. In ordinary cases not exceeding one hour.....	\$ 1.50
24. Or, in special cases, per hour.....	3.00
25. Attendances in land registry office, or other record office, to make searches, ordinary.....	1.50
26. Or, if special, up to.....	5.00
27. No attendance is to be allowed unless the taxing officer is satisfied as to its necessity.....	
28. On deponent to be sworn, or to make declaration, or acknowledgment.....	.75
29. The like by solicitor or his clerk.....	.75

JOURNEYS, ETC.

30. In ordinary cases, for every day of not less than seven hours employed on business or in travelling, in lieu of other charges....	\$20.00
31. Where less time than seven hours is so employed, per hour.....	3.00
32. In extraordinary cases the taxing officer may increase the above allowances if for any special reasons he shall think fit.....	

FEES TO COUNSEL, ETC.

33. To settle or revise any document, or set of documents in any one matter, submitted for settlement or revision at any one time.....	\$ 5.00
34. With power to the taxing officer to increase the above fee in special cases to a sum not exceeding.....	25.00
35. To attend on any proceedings, commission, arbitration or enquiry, not being an action or matter pending in any court, per day.....	25.00
36. For every subsequent day not to exceed for senior counsel.....	20.00
37. And for junior counsel, not to exceed.....	15.00
38. Conferences or consultations.....	5.00
39. Or in special cases, not to exceed.....	15.00
40. To advise on questions submitted to him for opinion.....	5.00
41. To be increased in special cases, to not exceeding.....	15.00
42. In all other cases not otherwise provided for, when attendance of counsel is necessary.....	5.00
43. Or, not to exceed.....	10.00
In all the above enumerated cases the judge shall have power to tax higher fees than those mentioned.	

PROBATE.

44. Instructions for probate or letters of administration.....	\$ 1.50
45. Perusing will or codicil, per folio.....	.10
46. Engrossing and collating will.....	1.00
47. Or per folio.....	.20
48. Instructions for renunciation.....	1.50

49. Drawing, per folio.....	.25
50. Probate or letters of administration under seal	.75
51. Attending registry extracting grant	1.50
52. Instructions for administration bond	1.50
53. Drawing and engrossing.....	2.00
54. Attending, entering, or subducing caveat.....	1.50
55. Service of warning to caveat and copy.....	1.00

The costs of any action or proceeding in probate where not specially provided for shall be the same as in other cases, and shall be regulated by this scale.

SCHEDULE NO. 3.

SCALE OF CONVEYANCING FEES.

1. For ordinary conveyance or mortgage, including preparation and execution thereof, and abstract if any, 2 per cent. on the amount of the purchase money, or money advanced for the first \$1,000; for the next \$1,000, 1 per cent.; for the next \$10,000, $\frac{1}{2}$ of 1 per cent.; for the next \$10,000, $\frac{1}{2}$ of 1 per cent.; and for any amount over \$22,000, $\frac{1}{2}$ of 1 per cent.....	
2. If the conveyance or mortgage contains special covenants, then in addition to the above fees	
3. Drawing, per folio	\$.25
4. Engrossing, per folio	.10
5. And in special cases, fee to counsel to settle.....	10.00
6. In cases of agreement for sale $\frac{1}{2}$ of the above fees.....	
7. When loan is negotiated by a solicitor, $\frac{1}{2}$ of 1 per cent. up to \$10,000, and $\frac{1}{2}$ of 1 per cent. for any amount beyond \$10,000.....	
8. Perusing title deeds, per folio.....	.05
9. All necessary attendances on parties or to register or to examine register, applications to register, etc.....	1.50

SCHEDULE NO. 4.

(Scale of Fees to Officers of Court, Witnesses, etc.)

ORDERS AND JUDGMENTS.

1. Drawing special minutes, when not prepared by the registrar, per folio.....	\$.20
2. Each copy and service of appointment to settle.....	.60
3. For every hour's attendance before the registrar, by his appointment, on settling minutes, if noted by the registrar or otherwise proved	1.00
4. The fee on settling minutes may be increased in the discretion of the registrar in special cases to a sum not exceeding \$5, where the solicitor attends personally. When the minutes are settled between the solicitors, the registrar shall have the same discretion as to the amount to be allowed in cases where one of the forms of orders or judgments appended hereto are used, or ought to be used.....	
NOTE.—No notice or appointment to settle minutes shall be given except by direction of the registrar, nor shall any of the above costs be allowed except such direction shall have been given.	

OATHS AND EXHIBITS.

5. Commissioners to take oaths or affidavits. For every oath, declaration, affirmation or attestation	\$.25
6. The solicitor for preparing each exhibit.....	.10
7. The commissioner for marking each exhibit	.10

TO SPECIAL EXAMINER, NOT BEING A JUDGE OF THE SUPREME COURT, OR A REGISTRAR OF THE COURT.

8. Appointment.....	\$.50
9. Attendance out of office, within two miles.....	2. 00
10. Over two miles, extra per mile.....	. 25
11. Attendance upon an appointment when solicitor or witness do not attend, and examiner not previously notified	1. 00
12. Administering oath, or taking affirmation.....	. 20
13. Certificate	. 50
14. Making up and forwarding answers, depositions, etc., including filing præcipe.....	. 50
15. Marking every exhibit.....	. 20
16. Taking depositions, per hour	1. 50
17. Copy for solicitor, per folio, if required	. 10

NOTE.—In case of a special examiner, not a salaried officer of the Provincial Government, the above fees to examiner shall be paid to and kept by him for his own use.

WITNESSES, ALLOWANCE TO.

18. For each day travelling to or from, or attending to give evidence. \$	2. 00
19. To witnesses, being Chinese or Indians, their reasonable expenses actually incurred in travelling, in lieu of mileage, and a sum not exceeding per diem	1. 00
20. Barristers, solicitors, physicians and surgeons, when called upon to give evidence, in consequence of any professional service rendered by them, or to give professional opinions, per diem.....	4. 00
21. Engineers and surveyors, 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
22. If the witnesses attend in one cause 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 witness over three miles shall be allowed, according to the sums reasonably and actually paid, but in no case shall exceed thirty cents per mile one way.	
The expenses for maps, plans, or other matters not referred to herein, if necessary and allowed by the court or judge at the trial or afterwards, shall be allowed according to their actual and reasonable cost, corresponding as nearly as possible to other charges in this schedule.	
In cases where professional or scientific witnesses are called or subpoenaed a reasonable sum shall be allowed for the time employed and expenses (if any) incurred by the witness in preparing himself to give the testimony expected from him.	

SHERIFF.

23. Advertisement, drawing, when required by law to be published in any newspaper, or to be posted up in a court house or other place, and transmitting same.....	\$ 1. 50
The sum actually disbursed for advertisements required by law in any newspaper.	
24. Affidavit of service, including attendances, oath, and copy, when prepared by sheriff	1. 00
25. Arrests, when amount does not exceed \$200.....	2. 00
26. Arrests, when amount does not exceed \$400.....	4. 00
27. Arrests, when amount is over \$400	6. 00
28. Attachment, arrest on (besides mileage).....	4. 00
29. Bail bond, or bond to the limits.....	2. 00
30. Assignment of the same.....	1. 00
31. Bringing up prisoners on attachment of habeas corpus, besides	

reasonable charge for travel, not to exceed forty cents per mile ...	1.50
32. Executing writ of possession, and serving and executing writ of delivery, besides mileage.....	6.00
33. Executing writ of assistance, besides expenses and mileage.....	5.00
34. Jury, special, notice of appointment for ballot of.....	.50
35. Balloting.....	1.50
36. Striking.....	1.50
37. Serving each special juror (besides mileage at twenty-five cents per mile).....	.50
38. Returning panel of special jurors.....	1.00
39. When sworn.....	1.00
40. Jury, ordinary, when sworn.....	1.00
41. Letter written (including copy) required by party or his attorney, respecting writs of process, when postage prepaid.....	.25
42. Mileage, <i>see</i> "Miscellaneous," at the end of schedule.	
43. Poundage on executions, and on attachments in the nature of executions where the sum made shall not exceed \$1,000, six per cent.	
44. Where the sum is over \$1,000 and under \$4,000, three per cent. on whatever exceeds \$1,000 in addition to the poundage allowed up to \$1,000; when the sum is \$4,000 and over, one and a half per cent. on whatever exceeds \$4,000, in addition to the poundage allowed up to \$4,000, exclusive of mileage for going to seize and sell, and except all disbursements necessarily and actually incurred in the care or removal of property, which disbursements shall not be allowed at a higher rate than \$2.50 per day for the person necessarily employed in the care or removal of such property.	
45. Presiding at, or attendance on execution of any writ or escheat, or other writ of a like nature.....	5.00
46. Summoning each juror in such case.....	.50
47. Bailiff's fee summoning jury, mileage reasonably incurred, per mile.....	.25
48. Hire of room, if actually paid, not to exceed per day.....	5.00
49. Replevin, precept or warrant to bailiff.....	.75
50. Drawing notice for service on defendant.....	.75
51. Delivering goods to the party obtaining the writ.....	3.00
52. Writ <i>de retorno habendo</i>	1.00
53. Bond.....	2.00
All necessary disbursements for the possession, care, or removal of property; which disbursements shall not be greater than those above allowed on poundage.	
54. Receiving, filing, entering and endorsing all writs or other papers.....	.25
55. Return of all process and writs, except subpoena.....	.50
56. Return of any pleading, rule, notice or other paper.....	.25
57. Sale of goods, notice of.....	.75
58. Postponement of.....	.25
59. Search, not being by a party to a cause, or his solicitor.....	.30
60. Certificate of result of 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).....	.75
61. Sequestration, executing writ of.....	4.00
62. Serving process, non-bailable or <i>seire facias</i> , each defendant.....	1.50
63. Each summoner on writ of <i>seire facias</i> , per day, to be paid by the sheriff.....	1.00
64. Serving any pleading, subpoena, rule, notice or other paper (besides mileage).....	.75
65. Each additional party served.....	.50
66. Schedule taken on execution, attachment, or other process, including copy to defendant, not exceeding five folios.....	1.00

67. Each folio above five folios.....	10
68. Viewing lands and instructing surveyors under <i>hab fac seisin</i> , and viewing property under any rule or order, exclusive of mileage, per day.....	5.00
69. Giving possession, exclusive of mileage, and assistance All reasonable necessary disbursements to surveyors and others, for surveying the lands and giving possession, to be allowed.	5.00
70. Warrant to execute process mesne or final, when given to a bailiff.....	.75

JURORS.

71. Each special juror, per cause	\$ 5.00
72. Each common juror, per day.....	1.50
73. But not to exceed in any one trial.....	5.00
74. Showers on a view, per day.....	5.00
75. For travelling expenses to the sheriff or under sheriff and showers on a view, and to jurymen and witnesses in all cases, expenses actually paid, if reasonable.	
76. The sheriff may, in all cases where a jury is demanded, require a sum to be deposited beforehand in his hands, to defray the probable expense. The surplus (if any) to be returned by the sheriff to the party making such deposit, and the deficiency (if any) to be made good to the sheriff by the party demanding the jury.	

MISCELLANEOUS.

77. For necessarily attaching the seal of the court to any document, not chargeable with a specific fee in this schedule or under any Act of the legislature (other than office copy fees).....	\$ 1.00
78. When the registrar is unable to make office copies, the parties requiring them may make them on payment of a fee for a search (when made), unless the registrar is called upon to certify them, in which case, unless otherwise provided, the charge shall be, per folio	.05
79. When allowances are left to the discretion of the registrar, he shall be guided as near as possible by allowances in the schedule in analogous cases.	
80. A folio is to comprise 100 words, every figure in a column being counted as a word.	
81. Where it has been satisfactorily proved that proceedings have been taken by solicitors out of court resulting in expediting proceedings, saving costs, or compromising suits, an allowance is to be made therefor, in the discretion of the judge, corresponding as near as possible to the allowances specified in this tariff.	
82. Services to be made at a distance shall, when practicable, be effected through any person residing or being in or near the place where the party to be served may be, and where any mail, stage, steamer, or other regular means of communication can be used, the document to be served shall be sent by it to such person for service, and in such case only the mileage actually and necessarily travelled by the person effecting service shall, besides the ordinary charge for service, be allowed, and for correspondence.....	1.00
83. Mileage, when payable in any case, shall be allowed only for the distance actually and necessarily travelled, but not otherwise, at per mile.....	.25

PRINTING.

84. Where any appeal book, report of evidence, pleading or other document has been printed, the registrar may allow the cost of printing, if ordered under Rule 814; or in case no order is made, if in the opinion of the registrar such printing was calculated to promote the convenience of the court in disposing of the cause or matter in question.	
--	--

PART VI.

MANITOBA TARIFF OF FEES.

THE QUEEN'S BENCH ACT, 1895.

By an Order-in-Council, No. 5205-G., dated the 17th October, 1895, the following Tariff of Fees has been approved by His Honour the Lieutenant-Governor-in-Council:—

The judges of the Court of Queen's Bench for Manitoba, have, in pursuance and execution of all powers and authorities conferred upon them by the Queen's Bench Act, 1895, and of all other powers and authorities enabling them in that behalf, promulgated the Tariff of Fees to be taken by, and allowed to, barristers, solicitors, sheriffs and officers of the court as follows:—

PART I.

GENERAL ALLOWANCES AS BETWEEN SOLICITOR AND CLIENT, AND AS BETWEEN PARTY AND PARTY.

INSTRUCTIONS.

1. Instructions to sue.....	\$ 4.00
2. Instructions to sue in undefended cases	3.00
3. Instructions to defend	4.00
4. Instructions for petitions and in matters not commenced by statement of claim	2.00

INSTRUCTIONS AFTER COMMENCEMENT OF ACTION.

5. For counter-claim.....	\$ 2.00
6. For reply to counter-claim.....	2.00
7. To amend any pleading when amendment proper	2.00
8. For special affidavits, when allowed by taxing officer	1.00
9. For special affidavit on production, when allowed by taxing officer	2.00
10. For special case.....	2.00
11. To add parties by special order	2.00
12. To add parties by præcipe order.....	1.00
13. For every suggestion	1.00
14. To defend for added parties on transmission of interest or revivor	2.00
15. For issue of fact by consent or judge's order	2.00
16. For confession of action for recovery of land, as to the whole or part.....	1.00
17. For brief.....	1.00
18. For special jury	2.00
19. To counsel in special matters.....	2.00
20. To counsel in common matters.....	1.50
21. For such other important step or proceeding, as the taxing officer is satisfied warrants such a charge.....	2.00

DRAWING PLEADINGS, ETC.

22. For statement of claim.....	\$ 4.00
23. For every additional folio, above twenty, to be allowed in the discretion of the taxing officer.....	.30
24. Statement of defence	2.00
25. For every additional folio, above five, to be allowed in the discretion of the taxing officer	.30
26. Statement of defence and counter-claim.....	3.00
27. For every additional folio, above ten, to be allowed in the discretion of the taxing officer.....	.30
28. Petition, per folio.....	.30
29. Record under Rule 546.....	1.50
30. For every additional folio, above five.....	.20
31. Issue for trial of facts by agreement or order, per folio.....	.30
In special or contested actions to be increased to such sum as the taxing officer thinks proper.	
32. Special case, per folio.....	.30
33. Drawing interrogatories or answers for any purpose required by law, per folio.....	.30
34. Præcipe to set down for appeal, rehearing, or on motion against judgment or verdict	2.00
To be increased in discretion of taxing officer to not exceeding \$5.	
The above charges include engrossing, but not copies to file or serve.	

AFFIDAVITS.

35. Drawing affidavits, per folio.....	\$.20
36. Engrossing same to be sworn, per folio.....	.10
37. Copies, when necessary, per folio.....	.10
38. Affidavit under Rule 205, including oath, and attending to swear..	1.00
39. Common affidavit of service (including service by post when necessary) or of payment of mileage, including engrossing, oath, and attending to swear.....	1.00
40. Preparing each exhibit.....	.10

PERUSALS.

41. Of pleadings of a party adverse in interest.....	\$ 1.00
42. Of affidavits and exhibits of a party adverse in interest, filed or produced on any application, where perusal is necessary.....	1.00
43. For every additional folio, above twenty.....	.05
Not in any case to exceed \$5.	
44. Of special case, by the solicitor of any party, except the one by whom it is prepared.....	2.00
45. In special, or contested actions or matters, of interrogatories or cross-interrogatories on commission, such sum as taxing officer thinks proper.	

WRITS.

46. Writs of execution, <i>venditioni exponas</i> , possession, delivery, sequestration, delivery or assessed value of chattels, etc.....	\$6.00
47. Renewal of writs of execution, etc.....	4.00
Including, in both cases, placing same in sheriff's hands, all attendances, endorsements and letters in connection therewith.	
48. Subpœna, <i>ad testificandum</i>	1.00
49. Subpœna <i>duces tecum</i>	1.25
50. Every additional folio over four.....	.15

SERVICE OF STATEMENT OF CLAIM.

51. Service of each copy statement of claim, when taxable to solicitor. \$ 1.00
 52. If served at a distance of over two miles from the nearest place of business or office of solicitor serving the same, for each mile beyond two. .20
 53. For service out of jurisdiction. Such allowance as taxing officer thinks proper.

BRIEFS.

54. Drawing brief. \$ 2.00
 55. Every additional folio, over five. .20
 56. Copy of documents, other than pleadings, per folio. .10
 57. Brief for second counsel, when fee taxed to him. 1.00
 58. Every additional folio, over five. .10

COPIES.

59. Of pleadings, notices and all other documents when no other provision is made, and copies are properly allowable, per folio. \$.10
 60. Of special and common orders of court or a judge. .75
 61. Every additional folio, over three. .10

NOTICES INCLUDING, UNLESS OTHERWISE SPECIFIED, ENGROSSING AND ONE COPY.

62. Demand of residence of plaintiff. \$.50
 63. Demand of names of partners. .50
 64. Demand of particulars. .50
 65. Demand of copies of pleadings, affidavits and other documents, when properly allowable. .50
 66. Particulars of claim, demand, set-off or counter-claim. 2.00
 67. Every additional folio, over five. .20
 68. Of disputing amount of claim. .50
 69. Of confession of action for recovery of land, as to whole or part. .50
 70. Notice of claim for improvements under Rule 571. 1.00
 71. Notice to admit, and produce. .50
 72. Every additional folio, over two. .20
 73. Of motion in court or chambers, per folio. .20
 74. Copies necessary to be served, per folio. .10
 75. Of trial or assessment. .50
 76. Of setting down for appeal, rehearing, or on motion against judgment or verdict. 1.00
 77. Every additional folio, over three. .30
 78. Notice by defendant to third party under Rule 239. 1.00
 79. Preparing and filling up for service in any cause or matter, each notice to creditors to prove claims; each notice that claim is allowed, specifying the amounts for principal, interest and costs, if any, and each notice that cheques may be received, including mailing in each case. .25
 80. Notice of filing affidavits, when required: only one notice to be allowed for a set of affidavits filed, or which ought to be filed together. .50
 81. All common notices not above specified. .50

ATTENDANCES.

82. Necessary attendance consequent on service of a notice to produce or admit, or an inspection of documents when produced under order, including making admission. \$ 1.00
 83. To be increased by taxing officer in case of special difficult and important nature to. 2.00

84. Attending on return of motion in chambers.....	1.00
85. On consultation with counsel in special difficult and important matters, in the discretion of the taxing officer.....	2.00
To be increased in the discretion of the taxing officer as between solicitor and client to such sum as he thinks proper.	
No attendance to be allowed to a solicitor on proceedings in which he also appears as counsel, or partner of counsel.	
86. Solicitor attending court or trial when not himself counsel, or partner of counsel.....	2.00
87. And in special difficult and important cases, each hour necessarily present at trial.....	2.00
In no case to exceed per day \$10.	
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, or other officer present at the time, or proved by affidavit.	
88. To hear judgment when not given at the close of the argument....	2.00
89. To hear judgment when cause on list for judgment, but judgment not given.....	1.00
90. On appointment of examiner, per hour.....	2.00
91. To be increased in the discretion of the taxing officer, to not exceeding per hour.....	3.00
On important points and matters requiring the attendance of counsel, the examiner may certify the amount of counsel fee to be allowed (to be noted at the time), for the guidance of the taxing officer, who may allow the same in lieu of fees for attendance.	
92. To obtain or give undertaking to defend, when service accepted by a solicitor.....	1.00
93. To file or serve papers.....	.50
94. Every other necessary attendance.....	.50
To be increased in special cases in the discretion of the taxing officer as between solicitor and client to such sum as he may think proper.	

LETTERS.

95. Letter to each defendant before action, only one to be allowed to any defendants who are in partnership, when subject of action relates to the transactions of their partnership.....	\$.50
96. Common letters, including necessary agency letters.....	.50
To be increased for special and important letters, in the discretion of the taxing officer as between solicitor and client to such sum as he may think proper.	

JUDGMENT, RULE OR ORDER.

97. Drawing minutes or judgment or order, when prepared by solicitor under directions of registrar or deputy clerk of the Crown, including engrossing, per folio.....	\$.30	11
98. Judgment when no defence, and in action for recovery of land, including attendance.....	2.00	12
99. Attending for appointment to settle or pass judgment or order of court, copy and service.....	1.50	12
When necessarily served on more than one party, the additional copies and services are to be allowed.		
100. Attendance on settling or passing minutes, per hour.....	1.00	124
To be increased in the discretion of the registrar or deputy clerk of the Crown in special and difficult cases, when the solicitor attends personally, to a sum not exceeding altogether \$5, to be noted at the time.		

MANITOBA TARIFF OF FEES.

423

1.00	101. Side-bar rule	1.00
	102. Attendance on warrant or appointment of master, per hour.....	2.00
2.00	103. To be increased in discretion of taxing officer to not exceeding, per hour.....	3.00
	On important points and matters requiring the attendance of counsel, the master may certify the amount of counsel fee to be allowed (to be noted at the time) for the guidance of the taxing officer, who may allow the same in lieu of fees for attendance.	
2.00	104. Every necessary common attendance	.50
	105. Drawing accounts, per folio.....	.20
2.00	106. Copy of account to file, per folio	.10
	107. Statement of issues, when required by the master.....	2.00
	In special matters, to be increased in the discretion of the taxing officer.	
	108. Every additional folio, over ten	.20
	109. Drawing advertisements for sale of real or personal estate under direction of the court, including all copies, except for printing..	2.00
1.00	110. Every additional folio, over five.....	.20
.00	To be increased in the discretion of the master, when special information has been procured for the purposes of the sale, to a sum not exceeding \$10.	
.00	111. Copies for printing, per folio	.10
.00	112. Every necessary attendance on printer	.50
	113. Revising proof.....	1.00
	114. Making arrangements with auctioneer.....	1.00
	115. Fee on conducting sale, when held where solicitor resides	5.00
	116. If solicitor engaged at sale for more than three hours, for each additional hour	1.00
.00	117. Fee on conducting sale elsewhere, besides all necessary travelling expenses, when solicitor attends with the approval of the master, previously given	10.00
50	118. If the sale occupies more than one day, the solicitor may be allowed, in addition to travelling expenses, per diem a sum not exceeding	20.00
50	By direction of the master, there may be also allowed to one other party to the suit his fees and expenses for attending sale, if, in the master's opinion, it is necessary and proper that he should attend.	
	The provisions of this tariff as to affidavits, copies and services, shall apply to proceedings in the master's office.	
	When accounts are taken, or proceedings usual on a reference to the master are had, by direction of the court or a judge, before the prothonotary, registrar or referee in chambers, the fees allowed in similar proceedings in the master's office shall be allowed in respect of such proceedings.	

TAXATION OF COSTS.

30	119. Drawing bill of costs as between party and party for taxation, including engrossing and copy for taxing officer, per folio.....\$	.30
30	120. Copy to serve, per folio.....	.10
0	121. Notice of taxation or appointment to tax, and one copy.....	.50
	122. Every additional copy, per folio.....	.10
	123. Attending on taxation, per hour	1.00

COURT FEES.

10	124. Fees after statement of claim, on defence, trial or argument before court, or any other step in the cause. 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 court, fixed by the Queen's Bench Act, 1895, sec. 12, and the first day of the following sittings so fixed

125. Fee on every judgment to the party obtaining the same.....	1.00
126. Fee on every record entered for trial	1.00

COUNSEL FEES.

127. On motion of course, or on motion in matters not special.....	\$ 2.00
128. On special ex parte motion or application to the court (only one counsel to be allowed)	10.00
To be increased in the discretion of the taxing officer to not exceeding \$40.	
129. On argument supporting or opposing application to the Court, on argument of special case, appeal, rehearing, or motion against judgment or verdict	10.00
To be increased on arguments of special and important nature in the discretion of the taxing officer. Not more than two counsel fees to be allowed on any argument.	
130. With brief on assessment.....	10.00
131. With brief at trial.....	10.00
To be increased in actions of a special and important nature in the discretion of the taxing officer; but more than one counsel fee shall not be allowed in any case not of a special and important nature, nor more than two in any case.	
132. On argument or examination in judges' chambers, in cases proper for the attendance, and in which counsel attends.....	5.00
To be increased in special and important cases in the discretion of the taxing officer.	
133. On argument or examination in referee's chambers, in cases proper for the attendance of counsel, and in which counsel attends	3.00
To be increased in special and important cases, in the discretion of the referee, to not exceeding \$10.	
134. On reference to master when attendance of counsel necessary....	5.00
To be increased in difficult and important cases in the discretion of the master to be noted at the time.	
135. On settling pleadings or petitions in difficult and important cases, in the discretion of the taxing officer, but not exceeding.....	20.00
136. On settling interrogatories, cross-interrogatories and special cases, and advising on evidence in contested cases, in the discretion of the taxing officer, but not exceeding.....	5.00
137. On drawing and settling allegations in præcipe under Rule 512 in special cases proper for the opinion of counsel.....	3.00
To be increased in the discretion of the taxing officer to not exceeding \$5.	
On arbitrations counsel fees may be allowed and taxed on the same scale and conditions, so far as possible, as those herein-before prescribed for counsel fees at trials.	

MEMORANDA.

- When it is proved that proceedings have been taken by solicitors out of court to expedite proceedings, save costs, or compromise actions, an allowance to be made therefor in the discretion of the taxing officer.
- The taxing officer may apply to the court or a judge, on the taxation of any item which is in his discretion, or which is referred to him.
- No application shall be allowed by either counsel or solicitor to the court or a judge, in reference to any item which is in the discretion of the taxing officer, but this is not to prevent an appeal from, or a review of, the taxation.

PART II.

FEES TO SHERIFFS AND CORONERS IN CIVIL MATTERS.

GENERAL MATTERS.

138.	Receiving, filing, entering and endorsing all writs, process, pleadings, rules, notices or other papers, each	\$.50
139.	Return of all writs and process, except subpoenas	.50
140.	Return of pleadings, rules, notices or other papers	.25
141.	Every search, not being by a party to an action or his solicitor	.25
142.	Certificate of result of search when required; a search for a writ against lands of a party shall include sales under writ against the same party, and for the then last six months	.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.	
143.	Every warrant to execute any writ or process, mesne or final, directed to, or to be executed by the sheriff when given to a bailiff	.75
144.	Every jury sworn, or action tried by a judge	1.00
145.	Every letter written (including copy) required by a party or his solicitor, respecting writs or process, when postage prepaid	.50

SERVICE OF PROCESS AND PAPERS.

146.	Service of process, each defendant (no fee for affidavit of service in such cases to be allowed, unless service made or recognized by sheriff)	\$ 1.50
147.	Service statement of claim, subpoena, rule, notice or other paper	.75
148.	For each additional party served	.50
149.	Actual and necessary mileage to the place where service is effected, per mile	.20
150.	Seizing estate and effects on attachment against an absconding debtor	3.00
151.	Valuators, each	1.00
152.	Removing or retaining property, reasonable and necessary disbursements and all allowances, to be made by taxing officer.	
153.	Drawing bond to secure goods taken under an attachment, if prepared by the sheriff	1.50

REPLEVIN.

154.	Warrant to bailiff	\$.75
155.	Drawing notice for service on defendant	.75
156.	Delivering goods to party obtaining the order	3.00
157.	Drawing replevin bond	2.00
158.	Assignment of bond	1.00
159.	Returning goods to defendant	2.00
160.	All reasonable and necessary disbursements and allowances for the possession, care and removal of property taken.	

SPECIAL JURIES.

161.	Fee on striking special jury	\$ 5.00
162.	Serving each special juror	.50
163.	Returning panel of special jurors	1.00

164. Keeping and checking pay list of special jurors' attendance, in each case..... 1.00
 165. Actual and necessary mileage serving special jurors, per mile.... .20

SALES, POUNDAGE, ETC.

166. Poundage on executions and attachments in the nature of executions, where the sum made shall not exceed \$400 5 per cent.
 167. Where the sum made is over \$400, and does not exceed \$4,000, upon the excess over \$400, and in addition to the poundage allowed up to that amount 2½ per cent.
 168. Where the sum made is over \$4,000, upon the excess over \$4,000 and in addition to the poundage allowed up to that amount... 1½ per cent.
 Exclusive of mileage going to seize and sell, and of all reasonable and necessary disbursements and allowances incurred in the care and removal of property.
 169. Schedule of goods taken on execution, attachment, or other process, including copy for defendant, not exceeding five folios. 1.00
 170. Every additional folio, above five..... .10
 171. Drawing advertisements when required by law to be published in the *Gazette*, or other newspaper, or to be posted up in the court house or other place, and transmitting same, in each action..... 1.50
 172. Every necessary notice of sale of goods (not more than three) in each action75
 173. Every notice of postponement of sale, in each suit..... .25
 174. The sum actually disbursed for advertisements required by law to be inserted in the *Gazette*, or other newspaper.

SEQUESTRATION.

175. Upon seizure of estate and effects under writ of sequestration ...\$ 4.00
 176. Schedule of goods taken, including copy for defendant, not exceeding five folios 1.00
 177. Every additional folio, above five..... .10
 178. Removing or retaining property, reasonable and necessary disbursements and allowances.
 179. Poundage upon sequestration followed by sale and collection, as on other executions.

WRITS OF POSSESSION, ETC.

180. Executing writ of possession, delivery, and delivery or assessed value of chattels.....\$ 6.00
 181. Actual and necessary mileage, per mile20
 182. Poundage upon a writ of delivery or assessed value of chattels, under which a levy is made, as on other executions.

MEMORANDUM.

The fees payable to the sheriff, on Crown side, at the date of "The Queen's Bench Act, 1895," coming into force, shall continue to be paid until further order.

PART III.

ALLOWANCES TO WITNESSES.

183. To witness residing within two miles of the court house where the action is tried, or the place at which they are required to attend, for each day's attendance.....\$ 1.25

I
J
E
E
L
WFi
Fi
Ev
Ev
Ms
Se
Co
Dr
Dr
Fo
FeeEve
Eve

1.00 .20	184. To witnesses residing more than two miles from the court house where the action is tried, or the place at which they are required to attend, for each day's attendance.....	1.50
ent.	185. To barristers, solicitors, civil engineers, physicians, and surgeons, when called upon to give evidence in consequence of any professional services rendered by them, or to give professional opinions, for each day's attendance.....	4.00
ent.	186. To provincial land surveyors (in addition to living expenses), for each day's attendance (R.S.M. ch. 121, sec. 50).....	6.00
ent.	In addition to the foregoing fees, the travelling expenses of witnesses residing more than two miles from the court house where the action is tried, or the place at which they are required to attend, shall be allowed according to the sums actually and reasonably expended, but shall in no case exceed twenty cents per mile one way.	
.00 .10	If witnesses attend in one case only they will be entitled to the full allowance and mileage in that case.	
	If witnesses attend in more than one case they will be entitled to a proportional part only in each case in which they attend.	

PART IV.

FEES PAYABLE IN STAMPS, OR OTHERWISE TO OFFICERS OF THE
COURT, ENTITLED UNDER THE QUEEN'S BENCH ACT,
1895, TO TAKE AND RECEIVE FEES TO
THEIR OWN USE.

JUDGES' CHAMBERS, AND REFEREE'S CHAMBERS.

00 10	Every oath or affirmation	\$.20
	Marking every exhibit	.20
	Every filing	.10
	Every order	.75
	Entering every order, where entry necessary, per folio	.10
	Drawing depositions under Rule 799, per folio	.20
	When an account is taken or enquiry made by the referee under direction of the court or a judge, the fees payable in similar proceedings in the master's office shall be paid.	

MASTER.

	Filing and entering judgment in master's book	\$.20
	Filing every subsequent order or other paper	.10
	Every warrant or appointment	.30
	Every oath or affirmation	.20
	Marking every exhibit	.20
	Searching files	.20
	Copy of papers given out, when required, per folio	.10
	Drawing depositions under Rule 798, per folio	.20
	Drawing report or order (to include time occupied), per folio	.20
	For copy (when necessary), per folio	.10
	Fee on report, only one to be allowed in each action or matter, on first report	1.00
	Every certificate	.50
	Every additional folio, over two	.20

Making up and forwarding depositions and proceedings in the master's office.....	50
Every attendance upon any proceeding, or enlargement thereof, or selling property.....	1.50
For each additional hour.....	1.50
(By the Queen's Bench Act, 1895, sec. 78, sub-sec. 5, a local master is entitled to a fee of \$2 for each hour.)	
Every special attendance out of office within two miles, per hour occupied with reference or sale.....	2.00
Every additional mile above two for travelling expenses.....	20
PROTHONOTARY, REGISTRAR, DEPUTY CLERKS OF THE CROWN, DEPUTY REGISTRARS, TAXING OFFICERS, ACCOUNTANT AND CLERK IN CHAMBERS.	
Issuing statement of claim.....	\$1.00
Filing copy statement of claim.....	50
Fee comparing and verifying copy statement of claim filed with the copy issued.....	25
For each five folios, or fraction thereof, over the first five.....	10
Filing statement of defence.....	50
Amending statement of claim or other proceeding.....	50
Every writ, including filing præcipe.....	1.00
Every <i>alias</i> , <i>pluries</i> , or renewed writ, including filing præcipe.....	75
Every subpoena, including filing præcipe.....	75
Entering action for trial or assessment.....	1.50
Setting down cause for any other purpose.....	20
Setting down special case.....	20
Attending on opening commission.....	1.00
Every certificate for registration.....	50
Every certificate made evidence by law, or required by the practice, including any necessary search.....	50
Every ordinary rule or order.....	1.00
Every interlocutory judgment, or judgment by default.....	1.50
Every final judgment, otherwise than by default.....	2.00
Entering judgment when necessary, per folio.....	10
Exemplification, or office or other copy, of papers or proceedings required to be given out, besides certificate and seal when required, per folio.....	10
Examining and authenticating papers when prepared by solicitor, every five folios or fraction thereof.....	10
Every search, if within one year.....	20
Every search, if over one, and within two years.....	30
Every search, if over two years, or a general search.....	1.00
Filing every affidavit or other document when no other fee prescribed by this tariff.....	10
Every oath or affirmation.....	20
Marking every exhibit.....	20
Making up and forwarding papers.....	50
Every commission for examination of witnesses.....	1.00
Entering satisfaction on record, and filing satisfaction piece, including any necessary search.....	1.00
Making entry required in debt attachment book.....	50
Every direction for payment of money into court.....	1.00
Every cheque for payment of money out of court.....	1.00
Every commission for taking affidavit, etc.....	5.00
Taxing bill of costs and giving certificate or allocatur.....	1.00
Every reference, enquiry, examination or other special matter, for every meeting not exceeding one hour and making return.....	1.50
Every reference, enquiry, examination or other special matter, each additional hour, or fraction thereof.....	1.50

SPECIAL EXAMINERS.

Every appointment.....	\$ 1.00
Every oath or affirmation.....	.20
Marking every exhibit.....	.20
Drawing depositions, per folio.....	.20
Fair copy for solicitor, when required, per folio	.10
Every certificate	.50
Every attendance upon an appointment, when solicitor or witnesses do not attend, and examiner not previously notified.....	1.00
Every adjournment, when no examination.....	1.00
(One-fourth of the fees to special examiners are payable in stamps).	

COMMISSIONERS.

Every oath or affirmation	\$.20
Marking every exhibit	.20
For transcript of shorthand notes, per folio.....	.10
For each additional copy, after the first, per folio.....	.05

STENOGRAPHERS.

For transcript of shorthand notes, per folio.....	\$.10
For each additional copy, after the first, per folio.....	.05

INTERPRETERS.

For each case.....	\$1 .50
To be increased in the discretion of the taxing officer to such sum as may seem proper.	

CRIERS.

Calling every case, with or without a jury.....	\$.75
Swearing each witness or constable.....	.20
Any fees payable to criers on Crown side at the time of passing of "The Queen's Bench Act, 1895," shall continue to be paid until further order.	

to e

E
E
E
F
F
F
F
F
F
F
F
F

PART VII.

NOVA SCOTIA TARIFF OF COSTS AND FEES.

CHAPTER 185 (R.S.N.S.).

OF COSTS AND FEES.

1. Fees, and allowances for departments, officials or persons in respect to the services mentioned in the schedule to this chapter, shall be as therein prescribed, and shall be regulated by the provisions in such schedule. R.S., ch. 128, sec. 1.

2. Every person taking any other or greater fee or allowance shall, for each offence, forfeit to the person aggrieved forty dollars; which sum, with such excessive fee or allowance, may be recovered by him in an action of debt. R.S., ch. 128, sec. 2; ch. 104, Order 63, Rule 17.

3. Any action for any such forfeiture shall be brought in the county in which the offence was committed, and within six months next after the date of such offence. R.S., ch. 128, sec. 3.

4. The fees taken at any of the departments of the Government shall be paid into the Provincial treasury, and accounted for in the annual account of such department. R.S., ch. 128, schedule.

5. (1) Every judge of probate, registrar of probate and registrar of deeds, shall on or before the first day of November in each year, make a return to the Provincial Secretary, showing the amount of all fees received by him during the year ending on the thirtieth day of September then next preceding, together with the amount of any such fees earned by him in such year, but not yet paid to him.

(2) Every judge of probate, registrar of probate, or registrar of deeds who fails to make such return, shall be liable to a penalty of four dollars for every day for which such return is delayed. 1888, ch. 24, sub-sec. 1 (part), 2 (part).

6. The returns to be made by sheriffs, prothonotaries and clerks of the Crown, and clerks of the County Court, shall be made as prescribed respectively in "The Sheriffs' Act," the chapter "Of Prothonotaries and Clerks of the Crown," and the chapter "Of Clerks of the County Court." 1888, ch. 24, sub-sec. 1 (part), 2 (part).

(1.) Fees to be taken at the Department of the Provincial Secretary.

Every certificate, under the hand of the Governor and the Great Seal of the Province.....	\$ 4.00
Every certificate, under the hand of the Governor and the seal at arms.....	2.00
Every certificate under the hand and seal of the Provincial Secretary.....	1.00
For registering diploma.....	4.00
For commission for sheriff.....	10.00
For commission for coroner.....	5.00
For commission for notary and tabellion public.....	10.00
For copies of any papers in the secretary's office, per folio.....	.10
For searching books or documents in the secretary's office.....	.25
For commission for judge of probate.....	10.00

For commission for prothonotary.....	10.00
For commission for registrar of deeds.....	10.00
For commission for registrar of probate.....	10.00
For commission for deputy surveyor of Crown lands.....	5.00
For commission for person appointed commissioners abroad under The Evidence Act.....	5.00
For commission for justice of the peace.....	5.00
For commission for master in supreme court.....	5.00
For commission for Queen's counsel.....	30.00
The fees to be charged and payable on each marriage license shall be	4.00
The fee for a license under the provisions of the Act of the Parliam- ent of Canada, known as the "Canada Temperance Act," such fee to be taken at the Provincial Secretary's office, and paid into the treasury, shall be.....	10.00
R.S. ch. 128, schedule (part) ; 1886, ch. 40, sec. 1, (a), (b).	

(2.) *Fees to be taken at the Department of Crown Lands, but this provision shall not apply to applicants for grants, or for information in connection with such applications.*

For every search.....	\$.30
Copy of any grant.....	.50
For every copy of, or portion of, or an entire general plan of, a county, such reasonable sum as the commissioner approves.	
Copies of other documents, per folio.....	.10
R.S. ch. 128, schedule (part).	

(3.) *Fees to be taken at the Department of Mines.*

For every search of any application for mining rights, or of title of any kind relating thereto.....	\$ 0.25
For every copy of any license to search, or work, or of any prospect- ing license, or of any paper affecting title, per folio.....	.10
Each certificate under the hand and seal of the commissioner.....	1.00
For every copy of any plan, such reasonable sum as the commis- sioner approves.	
For every license to transfer a lease of any mineral other than gold, or gold and silver.....	15.00
For every ratification of a transfer of a lease of any mineral other than gold, or gold and silver.....	15.00
For every license to transfer a lease of copper, lead, iron, tin, or precious stones.....	15.00
For every ratification of a transfer of a lease of copper, lead, iron, tin, or precious stones.....	15.00
1887, ch. 30, sec. 1 ; 1890, ch. 34, sec. 1 ; 1897, ch. 29, sec. 1.	

(4.) *Fees to be taken by Deputy Surveyors of Crown Lands.*

For every search.....	\$ 0.20
For copy of plan, with necessary connections.....	.50
Larger plans at rates to be agreed on.	
R.S. ch. 9, sec. 4.	

SUPREME COURT.

(1.) *Prothonotary's Fees.*

(I.) GENERAL.

Entering action, filing oath, warrant or præcipe.....	\$.50
Sealing (including signing) every writ, execution, or other process, including orders for arrest, orders of replevin, and other orders in lieu of process.....	.20

Entry
Trav
w

.00	Filing every writ, and entering return.....	.10
.00	Filing statement of claim, and all other pleadings.....	.10
.00	Entering appearance.....	.30
.00	Entering and filing every order of court.....	.10
.00	Copy of every order, when given by prothonotary.....	.10
.00	For drawing and striking a special jury, and for copies of the lists furnished to the respective parties, and all other services connected therewith.....	2.00
.00	Entering cause on docket, including attendance at all chambers.....	.30
.00	Swearing and impanneling jury.....	.20
.00	Swearing each witness or constable.....	.10
.00	Taking and entering verdict.....	.20
.00	Entering judgment in defended actions.....	.60
.00	Entering every judgment by default.....	.50
.20	The prothonotary at Halifax, for the entry of a judgment in an action not belonging to the Supreme Court at Halifax, and for the transcript thereof.....	.50
.20	Filing discontinuance.....	.10
.30	Copies of all papers, per folio.....	.10
.50	Every exhibit in a cause filed in court.....	.05
.50	Taking affidavit in court.....	.20
.50	Filing affidavit.....	.10
.50	Searching records.....	.10
.50	Drawing and taking every recognizance.....	.20
.50	Entering every non-suit.....	.10
.50	Sealing and signing every subpoena.....	.20
.50	For every person named in a subpoena.....	.10
.50	Taxing bill of costs.....	.20
.50	Copy of judgment, and certifying.....	.50
.50	Certificate of discharge of judgment.....	.20
.50	In full of all fees on judgments in undefended actions, by confession or on default.....	2.50
.50	In full of all fees on judgments in undefended foreclosure actions.....	3.50
.50	For attendance in court, sitting <i>in banco</i> , per hour.....	.40
.50	For certifying appeal of Supreme Court of Canada or Privy Council.....	2.50
.50	For certificate of final decree in winding up and Trustees' Act.....	1.00
.50	For each certificate under seal not provided for otherwise.....	.50
.50	No commission shall be allowed or deducted from money paid into court under any order or pleading.	

(II.) ACTIONS UNDER EIGHTY DOLLARS.

In actions to recover a debt, or liquidated demand in money, not exceeding eighty dollars, the fees shall be according to the scale for the time being in use in the county courts.

R. S. c. 128, schedule (part); 1900, c. 15, s. 1 (part).

(2.) Fees to be taken by a Commissioner of the Supreme Court.

For administering oath.....	\$.20
For allowing writ.....	.20
Taking depositions of witnesses, each witness.....	1.00
And for taking depositions, per folio.....	.10
Travelling fees, when necessary, per mile.....	.05
R. S. c. 128, schedule (part).	

(3.) Sheriff's Fees.

(I.) GENERAL.

Entry of every writ or order.....	\$.10
Travel per mile from place of residence of sheriff to place where a writ or order is served, by shortest available route.....	.10

Serving and return of every writ, order, process, or notice.....	1.00
Returning every writ, order, process, or notice, where the same has not been served	.50
Returning every writ out of the county.....	1.00
In cases where sheriff has been unable to effect service of any writ, order, process, or notice, actual travel necessarily performed in the efforts to effect service, to be allowed, not to exceed one journey from residence of sheriff to residence of the defendant, and to be verified under oath, per mile.....	.05
And where such writ, order, process, or notice has been subsequently served, second travel to effect such service allowed, but no more..	.10
Affidavit of service, attendance, and swearing	.40
Levy under writs of execution or attachment.....	1.00
Travel to sale of goods under execution, or order, per mile.....	.10
On execution or attachment, where a sale takes place, on payment of the money to the party, or his solicitor, for any sum not exceeding \$200.00	five per cent
On all sums in excess of \$200, five per cent. on the \$200, and one per cent. on all sums in excess of \$200	
Where there is no sale, on payment of the money, one half the above commission shall be payable to the sheriff, not exceeding \$25.	
On sale of land under "The Partition Act," for making sale, executing deed and paying over money, in lieu of all poundage.....	5.00
Executing every deed under foreclosure sale.....	1.00
Preparing and executing every deed under execution.....	2.00
Sheriff's report to court on sale of land.....	.50
On sale of land under foreclosure, or other equitable suits, attending the sale and receiving and paying over the amount, in lieu of all poundage, when the amount does not exceed \$1,000.....	10.00
On all sums over \$1,000 one per cent., but not in any case exceeding \$25.	
Posting handbills on sale of land, if done by sheriff.....	1.50
Executing writ of enquiry, summoning jury, and making return.....	10.00
Summoning and returning every special jury.....	3.00
For every arrest by virtue of order, or execution.....	1.00
Conveying arrested person to place of imprisonment, for each prisoner for the distance from place of arrest to place of imprisonment, per mile.....	.10
Every bond given by a prisoner for the liberty of the jail limits.....	1.00
Every bail or other bond.....	.60
Attending prisoner before court, judge or commissioners, except indigent debtors, to be paid by the treasurer of the municipality..	1.00
Making inventory and appraisal of goods, or estate attached, \$1, and ten cents for every additional folio above five.	
To each appraiser on first day.....	1.00
For every additional day actually employed.....	1.50
For making and certifying copy of attachment levied on land, and delivering to registrar of deeds, including inventory and appraisal.....	1.00
Or per folio.....	.10
For attending on the sittings of the Supreme Court or a County Court, for each day's personal attendance (except in the County of Halifax), to be paid by the treasurer of the municipality.....	3.00
In the County of Halifax, for each day's attendance on the sittings of Supreme Court, to be paid by the treasurer of the municipality..	1.50
For summoning grand and petit jurors, each sittings, such sum as is allowed by the municipal council, not less than.....	15.00

Fo
Tri
Pla

R.S.

For
For
For
For
ForOn e
On e
R.S.Atten
Servi
Trave
R.S.

(4.) Fees to be Taken by the Taxing Master.

For taxing each bill of costs, and certifying the same, if required.....\$ 1.00
 The taxing master may require payment of his fee before taxation.
 S.C.R., November 1st, 1886.

(5.) Fees to be Paid to an Appraiser.

For appraising goods or real property levied on under attachment,
 each appraiser.....\$.50
 Where property is extensive and business is complicated, for each day
 actually employed, each appraiser......70
 R.S. ch. 128, schedule (part).

(6.) Fees to be Paid to Jurors.

Grand, petit and special jurors, including talesmen, for actual at-
 tendance, per day.....\$ 1.00
 Travel, per mile, from place of residence to court house, until dis-
 charged from attendance......10
 If ferrage is necessarily paid, the juror shall be paid any excess over
 ten cents per mile. R.S. ch. 106, sec. 6, 48; R.S. ch. 128, schedule
 (part); 1900, ch. 45.

(7.) Stenographer's Fees.

On the certificate of the judge before whom the trial, or the examina-
 tion of a witness or witnesses has taken place, or an examination
 taken *de bene esse* has been used, a reasonable sum may be
 allowed for the expense of a stenographer where, for any special
 reason, a stenographer has been ordered by the judge to be
 procured, or his employment approved of. S.C.R., March 27, 1897.

(8.) Witness' Fees.

For attendance, per day.....\$.50
 Travel, per mile, coming and going......05
 Plaintiff or defendant no witness fees, except where called by the
 opposite party.
 R.S. ch. 128, schedule (part).

(9.) Crier's Fees.

For every default of appearance at trial of either party.....\$.05
 For calling jury in each cause......10
 For every verdict......10
 For swearing every witness......05
 For discharging a party by proclamation (to be paid by the treasurer
 of the municipality)......10
 On every bill of costs taxed in Halifax......20
 On every bill of costs taxed elsewhere......10
 R.S. ch. 128, schedule (part).

(10.) Constable's Fees (to be paid by Municipality).

Attending jury in each cause.....\$.20
 Serving every warrant or summons......20
 Travel per mile, the same as sheriff.
 R.S. ch. 128, schedule (part).

(11.) *Coroner's Fees.*

The same fees as a sheriff in cases where he discharges the duties of a sheriff.

R.S. ch. 128, schedule (part).

(12.) *Arbitrator's Fees, under Order of Court.*

Reasonable fees to be taxed.

R.S. ch. 128, schedule (part).

(13.) *Master's Fees.*

Every attendance on a reference, shown to have been necessary by affidavit, and approved of by the judge	\$ 1.50
Every report.....	1.50
And for every folio beyond six folios, but not to exceed twenty folios in all.....	.20
Administering every oath, and signing jurat.....	.40
All necessary travel, going and returning, per mile	.05
On sales of land in foreclosure and other equitable suits :—Attending the sale and receiving and paying over the amount, in lieu of all poundage.....	10.00
R.S. ch. 128, schedule (part).....	

(14.) *Solicitor's Fees.*

(I.) WRITS, SUMMONSES, ETC.

Writ of summons for commencement of action.....	\$ 2.00
Copy to serve.....	1.00
Indorsement of claim, if special under Or. III. r. 5.....	.80
Copy to serve.....	.40
Concurrent writ of summons.....	1.50
Renewal of writ of summons.....	1.25
Notice of a writ for service in lieu of service out of the jurisdiction....	1.00
Writ of inquiry.....	2.50
Writ of mandamus.....	2.00
Writ of <i>subpoena ad testificandum</i> , or <i>duces tecum</i>	.40
Copies, including service.....	.50
Writ of <i>distringas</i>	2.50
Writ of execution, or other writ to enforce any judgment, or order....	1.50
Procuring a writ of execution, or notice to the sheriff, marked with the seal of renewal.....	1.00
Notice thereof, to serve on sheriff.....	.50
Any writ not included in the above, and alias and subsequent writs....	1.50
The fees above include all indorsements and copies, or <i>præcipes</i> for the officer sealing them, and attendances to issue or seal, except where otherwise provided, but not the officers' fees.	
Summons to attend at judge's chambers.....	.75
Or, if special, at discretion of taxing authority, not exceeding.....	1.20
Originating summons, at taxing authority's discretion, not exceeding.	2.50
Copy for judge, if required by him	.40
Or, per folio.....	.10
Indorsing same and copies under Or. LV. r. 14.....	1.00

(II.) SERVICES AND NOTICES.

Every necessary notice and demand or order (not otherwise provided for).....	.75
Every copy thereof for service.....	.25

A
A
F
F
Co
Wh
Ente
If en
If a
t
To su
For s
For it
cl
For o
For re
For de

Each filing, service or filing in lieu of service, of any writ (except subpoena), notice, summons, order, interrogatories or petition, not authorized to be served by post, and requiring service on a party who has not entered an appearance.....	.75
Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent, for correspondence in addition	.50
Or, if authorized to be served by post	.30
Where any writ, order, and notice, or any two of them have to be served together, one fee only for service is to be allowed.	
Travel for service of subpoena 10 cents per mile for each mile actually travelled to place of service.	
In addition to the above fees, the following allowances are to be made:	
As to writs exceeding two folios, for copy for service, per folio, beyond the two	.10
As to summons to attend chambers for each copy to serve.....	.25
As to notices in proceedings to wind up companies, for preparing or filling up each notice to creditors to attend and receive debts, or to contributories to settle list of contributories	.15
And for preparing or filling up each notice to contributories, to be served with a general order for a call, or order for payment of a call	.15
And for drawing notice to be served on contributories, or creditors, of a meeting, per folio.....	.25
For each copy of the last mentioned notice to serve.....	.10
For preparing or filling up for service, in any other cause or matter, each notice to creditors, to prove claims, and each notice that payment may be received, specifying the amount to be received for principal and interest and costs, if any	.25
Copies for service of interrogatories, and petitions, and orders, with necessary notices (if any), per folio	.10
Where notice of filing affidavit is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed, together.	
In proceedings to wind up a company, the usual charges relating to printing shall be allowed, in lieu of copies for service where the fee for copies would exceed the charge for printing, and amount to more than \$12.	
Where any appointment is or ought to be adjourned, service of notice of the adjournment or next appointment is not to be allowed.	

(III.) APPEARANCES.

Entering appearance.....	\$ 1.00
If entered at one time, for more than one person, for every defendant beyond the first.....	.25
If a person appearing to a writ of summons to recover land, limits his defence, by his memorandum of appearance, in addition to the above.....	1.00

(IV.) INSTRUCTIONS.

To sue or defend.....	\$ 2.00
For statement of claim or special case.....	2.00
For endorsement of writ of summons, when no further statement of claim	1.50
For originating summons, \$1.50, or not to exceed.....	3.00
For reply, where defendant sets up a counter-claim.....	1.50
For defence, including counter-claim	2.00

For reply in any other case, with or without joinder of issue.....	1.00
For a special petition, any other pleading (not being a summons) and interrogatories for examination of a party or witness.....	1.50
For striking special jury	1.00
For affidavit in answer to interrogatories.....	1.00

(V.) DRAWING PLEADINGS AND OTHER DOCUMENTS.

Statement of claim.....	\$ 1.00
Or, per folio.....	.20
Defence	1.00
Or, per folio.....	.20
Counter-claim	.80
Or, per folio.....	.20
Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, and every other pleading, not being a petition or summons, and amendments of any plead- ing.....	.80
Or, per folio.....	.20
Particulars, breaches and objections, when required, and one copy to deliver	.80
Or, such amount as the taxing authority thinks fit, not exceeding, per folio	.15
If more than one copy to be delivered, for each other copy, per folio	.10
Deed	5.00
Bond, including execution and justification.....	5.00
Special case, whether original or in action, affidavits in answer to interrogatories, and other special affidavits, special petitions and interrogatories, per folio.....	.20
Accounts, statements and other documents for chambers, when required, not exceeding, per folio.....	.15
Advertisements, including attendance therefor.....	1.00
Advertisements of sales, including attendance, per folio.....	.20
Bill of costs for taxation, including copy.....	.50
One letter to each defendant before action, if actually sent.....	.50
Other letters, in course of the cause or matter, to opposite party, or his solicitor, when necessary in the opinion of the taxing authority, each	.50
Copies of pleadings, and other documents, where no other provision is made, per folio.....	.10
Where, pursuant to rules of court, or on any other proper occasion any pleading, special case, appeal, evidence, or other matter is printed, the solicitor of the party furnishing the copy, shall be allowed for a copy for the printer, per folio.....	.10
To the solicitor of the party furnishing the copy for examining the proof print, per folio.....	.05
And, for printing, the amount actually and properly paid to the printer, not exceeding, per folio.....	.20
The allowance per folio for supplying copy, reading proof, or print- ing, is not to include headings or jurats, except one heading in the front.	
And, where any part is properly printed in a foreign language, or as a <i>fac simile</i> , or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof has been read, such further allowance shall be made as the taxing authority thinks reasonable.	
These allowances are to include all attendances on the printer.	

(VI.) PERUSALS.

Of statement of claim, defence, reply, and other pleading (not being a petition in a pending cause or matter, or summons, other than an originating summons) by the solicitor of the party to whom the same are delivered.....	\$ 1.00
Or, per folio.....	.10
Of interrogatories to be answered by a party, or his solicitor.....	1.00
Of special case, by the solicitor of any party except the one by whom it is prepared.....	1.00
Or, per folio.....	.10
Of copy of order to add parties, notice of defendant's claim against any person, not a party to the action, under Order XVI., Rule 50, and of defendant's defence, and counter-claim served on a person not a party under Order XXI., Rule 13, by the solicitor of the party served therewith, and in these several cases the perusal of the plaintiff's statement of claim is also to be allowed, unless the solicitor has been previously allowed such perusal.....	1.00
Of notice to admit facts under Order XXXI., Rule 4, per folio.....	.10

(VII.) ATTENDANCES.

To obtain consent of next friend to sue in his name.....	\$ 1.00
To deliver, or file in lieu of delivery, any pleading (not being a petition or summons) and a special case.....	.25
To inspect, or produce for inspection, documents pursuant to a notice to admit.....	1.00
To examine or sign admissions.....	1.00
To inspect, or produce for inspection, documents referred to in any pleading, notice in lieu of pleading, or affidavit pursuant to notice, under Order XXX., Rule 14.....	1.00
To obtain or give any necessary or proper consent.....	1.00
To strike special jury.....	1.00
To obtain appointment to examine witnesses.....	.50
On examination of witnesses before any examiner, commissioner, officer, or other person, per witness.....	2.00
Or, according to circumstances, not to exceed.....	10.00
On a summons or motion at chambers, or before a single judge.....	1.00
Or, according to circumstances, not to exceed.....	7.50
To enter, or set down action, special case or appeal for hearing or trial, not to include chambers.....	.50
To hear judgment when same adjourned.....	1.00
On taxation of costs.....	1.00
To obtain or give an undertaking to appear.....	1.00
To examine title in a cause or matter, when requisite, at the discretion of the taxing authority, from \$1.50 to.....	5.00
Every other attendance necessary to be made by the solicitor personally..	1.00

(VIII.) BRIEFS.

Brief and copy.	
In the cause.	
On appeal to the Supreme Court.	
On appeal from a judge on trial.	
On appeal from a judge at chambers.	
On special cases.	
On special motions before the court in banc.	
On contested motions before judge at chambers, not exceeding in each instance.....	\$30.00
In cases in which the Supreme Court and County Court have concurrent jurisdiction, the brief and copy shall not exceed in each instance..	20.00
On contested motions at chambers, the brief shall not exceed \$10, unless the presiding judge certifies that the party is entitled to a larger amount, and fixes it.	

(IX.) SPECIAL PROVISIONS.

In addition to the above, an allowance is also to be made for the necessary expense of postage, carriage and transmission of documents, telegrams, maps, plans, surveys, and the reasonable expense of executing a commission to examine witnesses.

In foreclosure cases, if the amount does not exceed \$400, the solicitor's costs shall in no case exceed \$25, exclusive of disbursements.

In actions to recover a debt, or liquidated demand in money, not exceeding \$80, the costs shall be according to the scale for the time being in use in the County Courts.

The following are the items taxable by a solicitor in ordinary cases of default of appearance, in actions for a liquidated demand:

Instructions to sue.....	\$2.00
Letter to defendant.....	.50
Writ of summons.....	2.00
Copy to serve.....	1.00
Instructions for indorsement (if special).....	1.50
Indorsement of claim (if special).....	.80
Copy to serve.....	.40
Attending to enter judgment.....	1.00
Brief.....	2.50
Costs and attending to tax.....	1.50

\$13.20

(X.) COUNSEL FEES.

In every case after defence filed.

On appeal to the Supreme Court.

On appeal from a judge at trial.

On appeal from a judge at chambers.

On special cases.

On special motions before the court in banc, not exceeding in each instance.....\$100.00

In cases in which the Supreme Court and County Court have concurrent jurisdiction, not exceeding in each of the above..... 40.00

The taxing authority may, after consultation with a judge of the Supreme Court, increase the counsel fee to such amount as the judge approves, except in cases in the County Court for district No. 1, when he shall consult with the judge of the County Court. S.C.R., March 29, 1889, appendix N; 1900, ch. 15, sec. 1 (part).

COURT FOR DIVORCE AND MATRIMONIAL CAUSES.

(1.) Judge's Fees.

The judge ordinary, for each day he actually attends.....\$ 4.00

(2.) Fees of Counsel and Solicitor.

Retaining fee for counsel.....	\$ 5.00
Proxy	1.50
Draft of petition or other pleading, per folio.....	.20
Engrossing same, per folio.....	.10
Entering appearance.....	.75
Every subpoena, citation or other writ.....	1.00
Copies for service, each.....	.30
Drawing affidavit of service of subpoena, citation, or other process or proceeding.....	.40
Every petition necessary in conducting a cause	.75
Every order	.75

Counsel fee on making or defending every special motion, not to exceed	5.00
Drawing brief in every cause, per folio	.20
Counsel fee for examining and signing each pleading	2.50
Draft of interrogatories, per folio	.20
Engrossing interrogatories, per folio	.10
Counsel fee on hearing or argument, not to exceed	14.00
Making up bill of costs	.75
Serving every subpoena, or other writ or order	.70
Travel, per mile, from the residence of the party making service to the place of service	.05
Every necessary attendance on the registrar	1.50
Draft of decree, per folio	.10
Engrossing of decree, per folio	.10

(3.) Registrar's Fees.

Entering and filing every writ, bill, appearance, answer, or other pleading	\$.50
Filing every other paper, each	.10
Signing and sealing every writ or order, and certifying copies of papers	.50
Every motion in court or chambers	1.00
Every search	.20
Copies of all papers, per folio	.10
Every necessary attendance on judge ordinary	1.00
On trial or hearing, per day	5.00
Swearing every witness	.20
On trial, or final decree	1.50
Taking examination of every witness ordered by judge, besides travelling expenses	5.00
Entering cause for court or chambers	.30
Taxing costs	1.00

(4.) Fees of Commissioners on Examination of Witnesses.

For taking the examination of every witness, per day	\$ 5.00
R.S. ch. 128, schedule (part); 1890, ch. 33, sec. 1.	

(5.) Witness Fees as in the Supreme Court.

COUNTY COURTS.

(1.) Sheriff's Fees.

The fees for the services of sheriffs shall be the same as are prescribed by this chapter for the like services in the Supreme Court.

Writ of possession under "The Overholding Tenants Act," same as writ of possession in the Supreme Court.

(2.) Clerk's Fees.

(I.) In actions to recover a debt, or liquidated demand in money, when the amount involved does not exceed eighty dollars, and in appeals to the court:

For filing præcipe, and signing and sealing writs	\$.50
Signing and sealing orders for arrest, taking affidavits, administering oath, filing præcipe	1.00
For any concurrent writ and order for arrest, where a previous writ or order has been issued	.50
Signing and sealing every subpoena, including filing præcipe	.20
Signing and sealing any order	.10
Entering judgment	.50
Signing, sealing, and filing, when returned, any execution	.25

Copy of judgment and certificate.....	.30
Each entry on the docket, provided that there shall be no charge for other entries on the court docket but one, and no more than for two entries altogether.....	.10
Entry of any cause on chambers docket, when made	.10
Receiving, entering, filing and entering every appeal suit.....	.25
(II.) In controverted election petitions:	
Preparing notices of trial.....	.50
Posting up and mailing the same.....	.20
Preparing and posting up election list, each.....	.20
Attending election court, each day	2.00
Preparing and transmitting papers in cases of appeal.....	.50
For certificate of discharge of judgment.....	.20
For swearing each witness.....	.10
For searching records.....	.10
For copies of papers, per folio	.10
(III.) In other actions the fees of the clerk shall be the same as those prescribed in this chapter for a prothonotary for the like services in the Supreme Court. 1889, ch. 9, secs. 66, 67, and schedule; 1893, ch. 25, sec. 1; 1900, ch. 15, sec. 3.	

(3.) Fees of Solicitors and Counsel.

(I.) In actions to recover a debt, or liquidated demand in money, and in appeals to the court, where the amount involved does not exceed forty dollars:	
Writ of summons, and copy and statement of claim.....	2.50
For affidavit and order to arrest.....	.60
Any concurrent writ of summons and order to arrest.....	.30
Entering appearance, and filing and serving defence.....	.60
On final judgment	2.00
Every subpoena	.30
Every copy subpoena.....	.30
Execution	.70
Brief and copy, not less than \$1.00, nor more than (in the discretion of judge, taxing master, or clerk).....	2.00
Counsel fee when cause tried, to be taxed by and in the discretion of the judge, not to exceed.....	5.00
(II.) In actions to recover a debt, or liquidated demand in money, where the amount involved does not exceed eighty dollars, but is over forty dollars, and in appeals to the court, except appeals hereinbefore provided for.	
Writ of summons, and copy and statement of claim.....	3.00
Appeal bond in case of appeal	1.50
For affidavit and order to arrest.....	.75
Any concurrent writ of summons and order to arrest.....	.40
Entering appearance and filing and defence	.75
On final judgment.....	2.50
Every subpoena	.30
Every copy subpoena	.40
Execution	.80
Brief and copy not less than \$1.00, nor more than (in the discretion of the judge, taxing master or clerk).....	3.00
Counsel fee when cause tried not to exceed \$7.50, to be taxed by and in the discretion of the judge or taxing master.	
When cause is tried by a jury the counsel fee shall be taxed at fifteen dollars.	
And in addition for drawing pleadings and documents not specified in this scale (II.) solicitors shall be allowed one-half of the fees prescribed for solicitors for the like services in the Supreme Court.	

(III.) In other actions the fees of solicitors and counsel shall be the same as those prescribed by this chapter for solicitors and counsel for the like services in the Supreme Court.

(4.) *Other Officers.*

The fees for the services of commissioners, the taxing master, appraisers, coroners, criers, constables, jurors and witnesses, shall be the same as are prescribed by this chapter for the like services in the Supreme Court. 1889, ch. 9, sub-s. 43 (part), 69, 70, and schedule.

CORONER'S COURT.

(1.) *Coroner's Fees.*

For every inquisition, including \$2.50 for fees of jury and 50 cents for fee of constable, to be paid by the municipality.....\$10.00
Any extraordinary and necessary expense attending the inquest or burial of a deceased person, if approved of by the municipal council, shall be a municipal charge.

(2.) *Medical Practitioner's Fees.*

For attendance and evidence before coroner, including post mortem examination 5.00

(3.) *Constable's Fees.*

Summoning a jury by warrant from coroner, and attendance per day...\$.50
Travel per mile, the same as sheriff.

(4.) *Witness Fees as in the Supreme Court.*

R.S., ch. 128, schedule (part), 1885, ch. 1, sec. 8.

COURTS OF PROBATE.

(1.) *Fees to be Taken by the Judges of Probate Under "The Probate Act," Third Part.*

Where the estate does not exceed \$400 and there is no contest, in full of all fees	\$4.00
Where the estate does not exceed \$800 and there is no contest, in full of all fees	6.00
Every citation, including order for the same	.40
Every order not herein specially provided for	.40
For the probate of a will or letters of administration where the estate does not exceed \$800, and order for the same	3.50
Ditto, ditto, when above \$800 and not exceeding \$4000, and order	4.00
Ditto, ditto, when above \$4,000, and order	9.50
For warrant of appraisal and order for the same	.50
For every subpoena, attachment, execution, or other process not otherwise provided for, including order for the same	.20
Letters ad colligendum	2.00
Decree in ordinary cases of granting licenses to sell, mortgage or lease real property, allowing accounts, settlement of estate and distribution thereof, etc.	2.00
Decree for probate of a will or codicil, letters of administration, or granting license to sell, mortgage or lease real property, allowing accounts, settlement of estate, and distribution thereof, etc., where there is a contest	6.00
Transmitting appeal with statement of decision	5.00
Taking testimony in writing where there is a contest, per folio	.20
Warrant for commissioners to divide real property, on petition of parties	1.00

<i>Dedimus potestatem</i> to take deposition of witnesses, and order therefor.....	1.00
Appointing and allowing guardians to minors, and order therefor.....	3.00
Every oath administered by him	.20
Examining and taxing costs	.50
R.S. c. 128, schedule (part).	

(2.) Fees to be taken by the Registrar in districts in which there is a Judge of Probate under "The Probate Act," Third Part.

Where the estate does not exceed \$400 and there is no contest, in full of all fees.....	\$ 4.00
Where the estate does not exceed \$800 and there is no contest, in full of all fees.....	6.00
For filing every paper.....	.07
Probate of will and letters of administration and entry of order therefor, where the estate is under \$800.....	3.50
Where estate is above \$800 and does not exceed \$4,000, and entry of order.....	4.00
Where estate is above \$4,000, and entry of order therefor.....	9.50
Letters of guardianship or <i>ad colligendum</i> , and entry of order.....	2.00
Copy of will and probate, per folio.....	.10
For copy of will for the registry of deeds, and transmitting same when less than twenty folios.....	1.00
When more than twenty folios, per folio.....	.10
For copy of partition and valuation of real property for registry of deeds and transmitting same, per folio.....	.10
For copy of plan accompanying same.....	1.00
For preparing bond in all necessary cases.....	.80
Preparing citation and seal.....	.40
Each copy thereof.....	.20
Preparing necessary affidavits, each.....	.20
Filing every warrant and seal.....	.50
Filing every certificate of license to sell real property.....	1.00
For all copies of papers, per folio.....	.10
For every certificate and <i>dedimus potestatem</i>	1.00
For entry of every decree in registry book, and of every order not specially provided for, per folio.....	.10
Every search or inspection of documents.....	.20
Preparing subpoena and sealing.....	.40
Filing each præcipe for the same.....	.10
Filing every caveat or notice of appeal.....	.40
Preparing every execution, attachment, or other process not specially provided for, and entry of order therefor.....	.40
Filing every decree.....	2.00
Every oath administered by him.....	.20
Taxing costs.....	.50
1897, ch. 2, Registrar's Fees (part).	

(3.) Fees to be taken by the Registrar of Probate under the Second Part of "The Probate Act," in Probate Districts in which there is no Judge of Probate and a Judge of the County Court is *ex officio* Judge of the Court of Probate, and in those only, in addition to the Fees prescribed for Registrars in Probate Districts in which there is a Judge of Probate.

Decree for granting license to sell, mortgage, or lease real property.....	\$ 1.00
Warrant for commissioners to divide real property on petition.....	1.00
Transmitting appeal with statement of decision to judge.....	1.00
Attendance before judge at any sittings of the court, each case.....	.50

S
E
A
Si
Fi
At
Tr
Ex
Or
Co
Ap
Tr
Cer

Ser
Bail
Atte
Serv
Serv
Pou

When one case occupies more than one day, for each extra day.....	1.00
Every order not herein specifically provided for.....	.50
1897, ch. 2, Register's Fees (part).	

(4.) Fees of Counsel and Solicitors.

Taking instructions for client to commence or defend proceedings in Court of Probate.....	\$ 2.00
Preparing every petition.....	1.00
Preparing every other paper necessary to be prepared by him, including accounts, per folio.....	.20
Every additional copy thereof, per folio.....	.10
Every necessary attendance on court.....	1.50
Every hearing or argument before the court, not less than two dollars and fifty cents nor more than ten dollars, at the discretion of the taxing authority.	
Serving every notice or other paper on each person.....	.20
R.S., c. 128, sched. (part).	

(5.) Fees of Sheriff or other Officer.

Serving citation or other process (subpoena excepted), on each person\$	.50
Serving subpoena on each person.....	.20
Travelling fees effecting service same as in Supreme Court effecting service of a writ. R.S., c. 128, sched. (part).	

(6.) Appraiser's Fees.

For appraising the estate of a deceased person, for each day he is actually employed, not to exceed	\$ 2.00
R.S., c. 128, sched. (part).	

(7.) Witness fees as in the Supreme Court.

THE MUNICIPAL COURTS.

(1.) Fees to be paid to the Clerk.

Summons or capias.....	\$.50
Each copy of do	.25
Affidavits for capias or other purpose, each.....	.25
Subpoena.....	.30
For each copy of do.....	.20
Administering every oath in court.....	.10
Trial and judgment, when for \$40 or more.....	1.00
Trial and judgment, when under \$40.....	.50
Execution	.20
Orders, each.....	.20
Copies, each	.10
Appeal bond	.60
Transmitting appeal	.25
Certificate of judgment.....	.25
Certificate of discharge.....	.25

(2.) Constables' Fees.

Serving summons or capias and making return	\$.20
Bail bond	.50
Attending trial with prisoner under capias	.50
Serving subpoena	.20
Serving execution and return.....	.20
Poundage on execution, when sale, five per cent.	

Poundage on execution, when paid, two and one-half per cent.	
All travelling on service of summons, capias, execution and subpoena, actually and necessarily performed by constable or other officer, per mile.....	.05
1895, c. 4, s. 250, and schedule.	

(3.) *Witness Fees as in the Supreme Court.*

STIPENDIARY MAGISTRATES.

The fees to be taken in civil cases by any stipendiary magistrate of any county and by any constable for services in respect to proceedings before any such stipendiary magistrate, shall respectively be the same as those taken in a municipal court. 1898, c. 60, ss. 1, 2.

BEFORE JUSTICES OF THE PEACE IN CIVIL CASES.

(1.) *Justices' Fees.*

Each summons or capias, and copy thereof.....	\$.50
Affidavit for capias and swearing	.10
Subpoena	.20
Copy for each witness.....	.10
Trial and judgment before one justice	.50
Trial and judgment before two justices.....	1.00
Venire	.20
Returning all papers, with transcript thereof, to Supreme or County Court	.40
Each execution	.20
Affidavit of service of summons when required and swearing	.10
Affidavit on appeal and swearing	.10
Appeal bond.....	.50
Letter where claim is settled without summons.....	.20

All fees taken in any suit wherein the services and presence of two justices are required, as well as for execution therein, except for returning the papers on appeal, to be divided between the two justices acting therein as follows,—two-thirds to the justice first applied to, and the remaining third to the other. R.S. ch. 128, schedule (part) ; 1893, ch. 28, s. 1; 1894, ch. 14, sec. 1.

(2.) *Constables' Fees.*

Serving summons and making return.....	\$.20
Serving capias and making return	.20
Bail bond.....	.20
Summoning a jury	.20
Summoning each additional juror where there are not sufficient bystanders.....	.05
Serving subpoena each witness.....	.10
Serving execution.....	.20
Poundage on execution on sale of goods	.10
Poundage on execution where the amount is paid in money, for each four dollars.....	.05
All travelling to be computed from residence of justice to residence of defendant, on summons, capias or execution, each mile when necessarily done ; and from residence of officer to residence of witness, on subpoena, each mile when necessarily done.....	.08
When subpoenas are served by a constable travel shall not be charged for serving each witness, but only so much travel as is actually and necessarily performed by the constable in serving all the subpoenas. R.S., ch. 128, schedule (part).	

(3.) Witness' Fees.

Each day in actual attendance.....	\$.50
All travelling, to be computed from the residence of the witness to the place of trial, per mile.....	.10
R.S., ch. 128, schedule (part).	

(4.) Jurors' Fees.

Each juror on every trial.....	\$.20
R.S., ch. 128, schedule (part).	

FEES TO BE TAKEN UNDER THE SUMMARY CONVICTIONS ACT.

(1.) For a Stipendiary Magistrate or Justice of the Peace.

For an information and warrant for apprehension, or for an information and summons	\$.50
For each copy of summons or warrant to be served on defendant.....	.25
For each affidavit.....	.10
For each subpoena (only one to be taxed to each side, to include any number of names)	.10
For each summons to witness, to be taxed.....	.10
For each copy ditto	.10
For every recognizance (only one to be charged).....	.25
For hearing and determining case (each day).....	.50
For do., when second justice necessary on hearing (each day).....	.50
For warrant to levy penalty.....	.25
For making up record of conviction when the same is ordered to be returned on a certiorari	.50
In all cases of summary conviction before a justice or justice of the peace, or stipendiary magistrate, for every conviction, to be charged only in cases in which the conviction is drawn up in writing.....	.25
For every order made by a justice or justices of the peace, or stipendiary magistrate	.50
Copy of any papers connected with any trial and the minutes of the trial if demanded, per folio of 100 words.....	.10

(2.) Constables' Fees.

For serving summons.....	\$.20
For arrest under warrant.....	.50
For actual travel serving summons or making arrest, per mile.....	.10

(3.) Witness' Fees.

For attendance, when subpoenaed, per day.....	\$.50
For travel (per mile each way).....	.05
1889, ch. 35, sec. 1.	

FEES TO BE TAKEN UNDER THE LIQUOR LICENSE ACT.

(1.) For a Stipendiary Magistrate or for two Justices of the Peace, or for one Justice of the Peace in any case in which one Justice may act.

For information and warrant.....	\$.50
For information and summons.....	.50
For each copy of warrant or summons to be served on defendant	.25
For summons to be served on witness	.25
For each copy	.10
For hearing and determining the case, each justice	.50
For warrant to levy a penalty.....	.50

For copy of any papers connected with any trial and minutes of the trial when demanded, per folio.....	.10
For every conviction	.50
For warrant of commitment	.50
For making out certificate of conviction and forwarding same to inspector	.50
For recording conviction on license	.50

(2.) *For Constables.*

For constable assisting inspector in making searches, each search.....	\$.50
And for necessary travel per mile each way	.06
For costs and charges of conveying defendant to jail one dollar shall be allowed for the arrest, and six cents per mile for necessary travel in making the arrest and conveying to jail. 1895, ch. 2, sub-s. 115, 143.	

(3.) *Witness Fees.*

The same as in the Supreme Court.

BASTARDY CASES.

(1.) *Justice's Fees.*

The information of the woman in writing	\$.20
Warrant to apprehend the reputed father before birth of the child.....	.40
Bond thereon.....	.60
Warrant to bring the reputed father and mother before the justices.....	.60
All commitments, each.....	.20
Bond to perform order of filiation, whether on appeal or otherwise	.60
Warrant to apprehend the reputed father when he does not appear at the time of making order of filiation	.40
Order of filiation, per folio	.10

(2.) *Constable's Fees.*

The same as in other cases before justices. R.S., ch. 128, schedule (part).

(3.) *Witness Fees.*

The same as in the Supreme Court.

FEES OF REGISTRAR OF DEEDS.

For the attestation of a subscribing witness.....	\$.20
For entering and registering every deed or conveyance, per folio.....	.10
For entering every docket of judgment or attachment.....	.50
For registering appraisal, per folio.....	.10
For registering copy of partition of real property in Supreme Court or Court of Probate, per folio	.10
For entering and filing a discharge of judgment or attachment.....	.20
For every certificate of registry written on any deed or conveyance (not to be charged in case of judgment or attachment, or discharge thereof, or on the release of a mortgage).....	.20
For registering copy of will when less than twenty folios.....	1.00
When more than twenty folios, per folio	.10
For every office copy from the books of registry, or bill of sale or instrument on file, delivered out, per folio.....	.10
For every certificate upon such office copy, where such is required.....	.20
For every search, whether for a single deed or conveyance, or for a single title, made on one and the same day.....	.20
For filing, indexing and entering every bill of sale or copy, every instrument of hiring, lease or bargain under "The Bills of Sale Act"	.20

For administering every oath thereon	.20
For filing every renewal statement and affidavit of a bill of sale.....	.10
For entering and indexing every certificate of discharge.....	.20
For inspection of bill of sale or other instrument on file, each, or of a single title made on one and the same day.....	.20
For filing and indexing every certificate, order of protection, or order discharging an order of protection under "The Married Women's Property Act"	.20
For every inspection of certificates and orders under the said Act made on a single day.....	.20
For searching in firm index, under the chapter "Of The Registration of Partnerships," each firm.....	.10
For searching in individual index, under such chapter, each name.....	.10
For each certificate under such chapter when required.....	.25
For filing an assignment and affidavit, and for making all proper indorsements in connection therewith under "The Assignments Act"	.50
For registering a claim for lien under "The Mechanics' Lien Act." ..	.25
For registering a discharge under "The Mechanics' Lien Act."	.25
For every certificate of title and incumbrances furnished in foreclosure or other suits at law, or in equity, under any general rule of court or order in a cause	2.50
R.S. ch. 128 schedule (part); R.S. ch. 83, sec. 18; 1898, ch. 11, sec. 13 (part); 1898, ch. 22, schedule; 1899, ch. 29, secs. 18 (part), 24 (part).	

FEES OF JAILER OR KEEPER OF LOCK-UP HOUSE.

For every person committed to jail on civil process.....	\$.50
For every person discharged therefrom, except insolvents or indigent debtors and criminals.....	.50
R.S. ch. 128, schedule (part).	

FEES ON DISTRESS FOR RENT.

Warrant to bailiff	\$.50
Appraisement	.20
Notice and each necessary copy.....	.10
Appraisers, each.....	.25
On a sale or payment without sale, the same fees as to a sheriff.	
No custody money to be allowed.	
R.S., ch. 128, schedule (part); 1886, ch. 39, sec. 1.	

FEES UNDER "THE COLLECTION ACT."

(1.) Commissioner's Fees.

Each commissioner, stipendiary magistrate, or justice, perusing affidavits and issuing orders for examination	\$.50
Each commissioner, stipendiary magistrate, or justice for each day's attendance at examination, hearing an enquiry.....	1.00
Each commissioner, stipendiary magistrate, or justice, on signing order or statutory decision.	
1894, ch. 4, schedule of fees.	

(2.) Sheriff's and Constable's Fees.

Demand under execution and certificate.....	\$ 1.00
Travel one way necessary under execution from residence of sheriff, per mile.....	.10
Arrest under any warrant or order authorized by this chapter	.50
Necessary travel to make arrest one way, per mile.....	.10
1897, ch. 38, sec. 9.	

FEES "UNDER THE INDIGENT DEBTORS' ACT."

Each commissioner, on signing order.....	\$ 1.00
Each stipendiary magistrate or justice, on signing order.....	.50
If proceeding adjourned, same fees each day of attendance.....	
Each commissioner, on signing final order.....	.50
Each stipendiary magistrate or justice, on signing final order.....	.25
R.S., ch. 118, schedule of fees.	

FEES UNDER THE CHAPTER "OF ESTREATS."

(1.) *Prothonotary.*

Making up estreats of each sittings.....	\$ 1.00
Entering and extracting upon a roll, in duplicate, the fines and forfeited recognizances, each sittings, making oath to same, and transmitting to the sheriff.....	2.00
Making out and delivering to the sheriff the writ of execution and capias thereon.....	.50
Making out and certifying copy of roll and return of the sheriff, and transmitting it to the Attorney-General.....	1.00
Drawing order of the judge to estreat and put in suit.....	.50

(2.) *Sheriff.*

Levying fines or recognizances estreated, the same allowance as on executions in civil proceedings. R.S. ch. 119, sec. 13.

CHAPTER 186 (R.S.N.S.).

OF FEES PAYABLE BY MUNICIPALITIES FOR THE ADMINISTRATION OF JUSTICE.

AMOUNT OF FEES.

1. (1) A prothonotary and clerk of the Crown shall be allowed under "The Juries Act," for copying the names with the descriptions, additions, and numbers of jurors into the jury book, the sum of one cent for each juror whose name is entered for the first time in the jury book, and for preparing each ticket containing the name or number of a juror whose name or number has not been previously placed in a jury box, one cent.

(2) He shall be allowed in criminal cases for issuing subpoenas for witnesses for the prosecution the same fees that he is allowed in civil cases. 1900, ch. 20, sec. 1.

(3) He shall also be allowed in criminal cases the fees prescribed in the first schedule to this chapter.

2. (1) Every stipendiary magistrate and justice of the peace, for his services in respect to a person charged with an indictable offence, shall be allowed the fees prescribed in the first schedule to this chapter.

(2) Nothing in this section contained shall apply to a stipendiary magistrate to whom a municipality pays a salary in lieu of fees. 1900, ch. 20, sec. 2.

3. Every constable for executing, or attempting, when due diligence has been used, to execute, process or warrants of commitment in the case of a person charged with an indictable offence, shall be allowed the fees prescribed in such schedule, or in lieu of such fees he may be allowed by the prosecuting officer, if any, and the stipendiary magistrate or justice having cognizance of the case, reasonable disbursements, and a sum not exceeding one dollar for each day necessarily spent by him in executing, or so attempting to execute, such process or warrant of commitment. 1900, ch. 20, sec. 3.

4. Every person who attends before a stipendiary magistrate, justice of the peace, or at a sitting of a county court, judge's criminal court, or of the Supreme Court, as a witness for the prosecution in respect to an indictable offence, shall be allowed the fees prescribed in such schedule for his travel and actual attendance. 1900, ch. 20, sec. 4.

5. If such witness is a poor person who is obliged to attend a sittings of any court on recognizance or subpoena, the court or judge may direct that such person shall be paid, in addition to such fees, such allowance as the court or judge, after examining such poor person on oath, thinks reasonable for his time, trouble and expense as a witness. 1900, ch. 20, sec. 5.

VERIFICATION OF ACCOUNT.

6. An account containing the items of fees and allowances claimed by a prothonotary and clerk of the Crown, by a stipendiary magistrate or justice of the peace under this chapter, shall be paid upon the production of such account, verified by the affidavit of the claimant (form A in the second schedule), stating that the services mentioned in such account have been actually and necessarily performed by him, and that the account is correct and justly due to him. 1900, ch. 20, sec. 6.

7. (1) The account of a constable shall be paid on the certificate (form B) of the prosecuting officer, if any, and of the clerk of the court, stipendiary magistrate, or justice of the peace, having cognizance of the case in which the services are alleged to have been rendered, whether there is such prosecuting officer or not.

(2) Such judge, stipendiary magistrate or justice, may require an affidavit from such constable verifying his account, and may examine him on oath in respect to the same, and disallow any part thereof. 1900, ch. 20, sec. 7.

8. A witness or prosecutor shall be entitled to the payment of his fees and allowances when they are certified to be correct,

(a) by the prosecuting officer, if any, and by the stipendiary magistrate, or justice of the peace, in the case of which he has cognizance, whether there is such prosecuting officer or not; or

(b) by the prosecuting officer, and the clerk of the Crown, or clerk of the court, in a case before the Supreme Court, or a county court judge's criminal court. 1900, ch. 20, sec. 8.

9. The certificate (form C), shall state that there was reasonable ground for instituting the proceedings, that the witness was a material and necessary witness for the prosecution, and that he attended expressly to give evidence in the same. 1900, ch. 20, sec. 9.

10. Before signing such certificate an affidavit may be required from any such prosecutor or witness, stating the facts required to be stated in such certificate, or he may be examined on oath in respect to such facts. 1900, ch. 20, sec. 10.

11. The forms of verification in the schedule, with necessary variations for particular circumstances, may be used. 1900, ch. 20, sec. 11.

PAYMENT OF FEES.

12.—(1) Where an offence has been committed, or is supposed to have been committed, in any municipality, or in any town, which, before its incorporation, formed a part of such municipality, the fees and allowances under this chapter of any stipendiary magistrate, justice of the peace, constable, prosecutor or witness concerned in the prosecution in respect to such offence, shall be paid to them respectively in the first instance by the treasurer of such municipality.

(2) The fees and allowances of a prothonotary and clerk of the Crown under this chapter shall be paid to him in the first instance by the municipality for which he performs the services.

(3) The fees and allowances paid by such treasurer shall be allowed to him in his accounts.

(4) Nothing in this section shall be construed to prevent the municipality which makes such payment from reimbursing itself in respect to such payment in whole or in part from the towns or other municipalities in the same county with itself. 1900, c. 20, s. 12.

FIRST SCHEDULE.

STIPENDIARY MAGISTRATE AND JUSTICE OF THE PEACE.

(Section 2.)

For signing or sealing every order or certificate	\$.20
For attendance at trial	.50
For swearing and empanelling jury.....	.20
For swearing each witness or constable.....	.10
For taking and entering a verdict of jury.....	.20
For arraigning every prisoner.....	.20
For filing the papers in cause.....	.10
For taking and entering sentence.....	.20
For taking recognizance.....	.20
For an information and warrant for apprehension, or for an information and summons.....	.50
For each copy of summons or warrant to be served on defendant.....	.25
For each affidavit	.10
For each summons to witness.....	.10
For each copy, ditto.....	.10
For every recognizance.....	.25
For hearing and determining case (each day)	.50
For do., when second justice necessary on hearing, (each day).....	.50
For warrant of commitment, or binding over in lieu of commitment..	.25
For taking the deposition of witnesses, per folio.....	.10

CONSTABLES' FEES.

(Section 3.)

For serving summons or subpoena.....	\$.20
For arrest under warrant.....	1.50
For actual travel serving summons, or subpoena, or making arrest, per mile.....	.10
Taking person to jail, exclusive of disbursements necessarily expended in his conveyance, per mile	.10

WITNESS' FEES.

(Section 4.)

For attendance, per day.....	\$1.00
Travel per mile, coming and going from residence to the place of trial..	.05

PART VIII.

APPENDIX OF FORMS.

Form No. 1.

APPOINTMENT TO TAX COSTS.

IN THE HIGH COURT OF JUSTICE (or as the case may be).

(Short Style of Cause.)

I hereby appoint the day of , 19 , at
the hour of o'clock in the noon, at my Chambers
at in the , to tax the plaintiffs' costs of action (or
as the case may be).

X. Y.,

Taxing Officer (or as the case may be).

Dated the day of , 19 .

Form No. 2.

CERTIFICATE OF TAXATION.

(Court and Style of Cause.)

I certify that pursuant to the judgment (or order) herein
dated (or the request of the Master in Ordinary, or as
may be) I have taxed the costs of the at \$

Dated the day of , A.D. 19 .

X. Y.,

Taxing Officer.

Form No. 3.

OBJECTIONS TO TAXATION.

IN THE HIGH COURT OF JUSTICE.

Between A.B., Plaintiff,

and

C.D., Defendant.

Objections taken by the plaintiff (or defendant) to the
taxation by , Esq., local taxing officer of the High Court
of Justice in and for the County of at (or as the
case may be) of the bill of costs of the defendant (or plaintiff)

under the judgment or order herein dated the _____ day of _____, 19 ____.

The plaintiff objects to the allowance (or disallowance) of the items in the said bill hereinafter set forth for the following reasons :

NO. OF OBJECTION.	PAGE OF BILL.	NO. OF ITEM.	REASONS FOR ALLOWANCE (OR DISALLOWANCE).
1	1	3	
2	2	11	
3	4	30	
4	5	60	
5	6	90	

Dated at _____ the _____ day of _____, 19 ____.

To G. H.,
Solicitor for defendants.

E. F.,
Solicitor for plaintiff.

Form No. 4.

FORM OF CERTIFICATE UNDER CRIMINAL CODE 898.

Office of the Clerk of the Peace for the County of _____.

I hereby certify that at a Court of General Sessions of the Peace, (or, the name of any other Court, to which the appeal was made, as the case may be), holden at _____, in and for the said county, on _____ last past : an appeal by A.B. against a conviction (or order) of J. S., Esquire, a Justice of the Peace in and for the said county, came on to be tried, and was there heard and determined, and the said Court of General Sessions (or other Court as the case may be) thereupon ordered that the said conviction (or order) should be confirmed (or quashed), and that the said (appellant) should pay to the said (respondent) the sum of _____ for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the Clerk of the Peace, for the said county, on or before the day of _____ (instant), to be by him handed over to the said (respondent), and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order.

Dated at _____ this _____ day of _____ one thousand nine hundred and _____

G.H.,

Clerk of the Peace.

Form No. 5.

WARRANT OF DISTRESS FOR COSTS OF AN APPEAL
AGAINST A CONVICTION OR ORDER.

Canada,)
 Province of),
 County of).

To all or any of the constables and other peace officers in the said County of .

Whereas A.B., of the of , in the county of (occupation), was on the day of A.D. 19 , duly convicted before , a Justice of the Peace in and for the County of for that (set out the offence as stated in the conviction), or, if the appeal was from an order for the payment of money, the following will be substituted for the above recital. See Form E.E.E. to the Criminal Code:—

“Whereas, on the day of , A.D. 19 , a complaint was made before , a Justice of the Peace in and for the said county, for that (set out the matter complained of as in the order), and thereupon the matter of the said complaint having been considered, the said A.B. was adjudged to pay the said C.D. the sum of , on or before the day of , A.D. 19 , and also pay to the said C.D. the sum of , for his costs in that behalf). And whereas the said A.B. appealed to the Court of General Sessions of the Peace (or other Court discharging the functions of the Court of General Sessions, as the case may be) for the said County, against the said conviction or order, in which appeal the said A.B. was the appellant, and the said C.D. (or J.S., Esquire, the Justice of the Peace who made the said conviction or order) was the respondent, and which said appeal came on to be tried and was heard and determined at the last General Sessions of the Peace (or other Court, as the case may be), for the said County, holden at , on , and the said Court thereupon ordered that the said conviction (or order) should be confirmed (or quashed) and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, which said sum was to be paid to the Clerk of the Peace for the said County, on or before the day of one thousand nine hundred and , to be by him handed over to the said C.D., and whereas the Clerk of the Peace of the said County has, on the day of (instant), duly certified that the

said sum for costs had not been paid; These are, therefore, to command you, in His Majesty's name, forthwith to make distress of the goods and chattels of the said A.B., and if within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to the Clerk of the Peace for the said county of , that he may pay and apply the same as by law directed; and if no such distress can be found, then to certify the same unto me or any other Justice of the Peace for the same County, that such proceedings may be had herein as to law appertain.

Given under my hand and seal this day of , in the year , at , in the County aforesaid.

(Seal),

J.P., (Name of County.)

Form No. 6.

BOND—SECURITY FOR COSTS OF ACTION.

Rules 1198 et seq.

Know all men by these presents that we, A.B., of the of , in the County of , and C.D., of etc., and E.F., of etc., are jointly and severally held and firmly bound unto G.H., of etc., in the penal sum of four hundred dollars (or such other sum as may be ordered) of lawful money of Canada, to be paid to the said G.H., his executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, and each of us binds himself, our, and each of our heirs, executors and administrators respectively, firmly by these presents.

Sealed with our seals.

Dated this day of , 19 .

Whereas by an order dated the day of , 19 , and made in a certain action now pending in the High Court of Justice, wherein the said A.B. is plaintiff and the said G.H. is defendant, it was ordered that the said A.B. should within four weeks from the service of the said order, give security on his behalf in the penal sum of four hundred dollars, to answer the costs of the said G.H. of the said action.

Now the condition of this obligation is such that if the above bounden A.B. and E.F., or one of them, their, or one of their heirs, executors or administrators, do and shall well and truly pay or cause to be paid to the said G.H., his executors, administrators or assigns, all such costs as may be awarded to him, the said G.H. in the said action, then this obligation shall be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered)
in the presence of .)

Form No. 7.

AFFIDAVIT OF JUSTIFICATION FOR APPEAL BOND.

IN THE HIGH COURT OF JUSTICE.

Between A.B. (Respondent), Plaintiff,
and
C.D. (Appellant), Defendant.

I, E.F., of etc., make oath and say as follows :

1. I am one of the sureties to the annexed bond.
2. I am a resident inhabitant of Ontario, residing at
and am a householder (or a freeholder) in .
3. I am worth and own property to the amount of \$
(the sum mentioned as the penalty, or such sum as the deponent is bound in), over and above what will pay all my debts (if surety in any other matter add and every other sum for which I am now liable or for which I am bail or surety).
4. I am not bail or surety for any plaintiff or defendant except in this action (or if bail or surety in any other cause or matter add and except for G.H. in an action in the High Court in which X.Y., is plaintiff and G.H. is defendant in the sum of \$, or as the case may be, specifying the several causes or matters with the court in which each is, and the sums in which the deponent is bail or security).

5. And I, J.H., of , make oath and say as follows (in similar terms as the case may require, or separate affidavits may be made).

The above-named deponents,
E.F. and J.H., were sworn, etc. }
the day of , 18 , }
before me.

A Commissioner, etc.

Form No. 8.**AFFIDAVIT OF EXECUTION***(Of Bond or other Instrument.)*

Ontario, , } I, of the of in the
 County of . } County of (addition or occupation)
 To wit: } make oath and say as follows:

1. I was personally present and did see the within (or annexed) instrument duly signed, sealed and executed by C.D. and E.F., two of the parties thereto.
 2. The said instrument was so executed at .
 3. I know the said parties.
 4. I am a subscribing witness to the said instrument.
- Sworn before me, etc.

Form No. 9.**BOND FOR SECURITY OF COSTS OF AN APPEAL TO
THE SUPREME COURT OF CANADA.**

Know all men by these presents, that we , of the
 of , in the county of and Province of , of the
 same place and , of the same place , are
 jointly and severally held, and firmly bound unto in the
 penal sum of \$500, for which payment well and truly to be
 made we bind ourselves and each of us binds himself, our and
 each of our heirs, executors and administrators firmly by these
 presents.

Dated this day of , A.D. 19 .

Whereas a certain action was brought in the Queen's Bench
 Division of the High Court of Justice for Ontario by the said
 , plaintiff against the said , defendant. And
 whereas judgment was given in the said Court against the said
 , who appealed from the said judgment to the Court of
 Appeal for Ontario. And whereas judgment was given in the
 action in the said last mentioned Court on the day of ,
 A.D. 19 . And whereas the said complains that in
 giving the last mentioned judgment in the said action upon the
 said appeal manifest error hath intervened, wherefore the said
 desires to appeal from the said judgment of the Court of
 Appeal for Ontario to the Supreme Court of Canada.

Now the condition of this obligation is such, that if the said
shall effectually prosecute his said appeal and pay such
costs and damages as may be awarded against him by the
Supreme Court of Canada, then this obligation shall be void,
otherwise to remain in full force and effect.

Signed, sealed and delivered }
in presence of . }

Form No. 10.

AFFIDAVIT OF EXECUTION.

Province of , } I, of the of , in the County
County of . } of and Province of , make
To wit: } oath and say:

1. That I was personally present and did see the within
instrument duly signed, sealed and executed by and
the parties thereto.
2. That the said instrument was executed at .
3. That I know the said parties.
4. That I am a subscribing witness to the said instru-
ment.

Sworn before me at the
of in the County of
and Province of , this
day of , A.D. 19 . }

A Commissioner in H.C.J., etc.

Form No. 11.

AFFIDAVIT OF JUSTIFICATION BY SURETIES.

I, of the of , in the County of and
Province of , make oath and say, that I am a resident
inhabitant of the Province of , and am a freeholder in
the of aforesaid, and that I am worth the sum of
\$1,000, over and above what will pay all my debts.

And I, of the of in the County of
and the Province of , make oath and say, that I am a
resident inhabitant of the said Province of , and am a
freeholder in the of aforesaid, and that I am worth

the sum of \$1,000, over and above what will pay all my debts.

The above named deponents,
and , were severally sworn before
me in the of in the County
of and Province of , this
day of , A.D. 19

A Commissioner in H.C.J., etc.

Form No. 12.

AFFIDAVIT OF DISBURSEMENTS.

(*Supreme Court of Canada*).

IN THE SUPREME COURT OF CANADA.

Between A.B., Appellant,
and
C.D., Respondent.

I, of the of in the Province of
, (occupation) , make oath and say :

1. That I am (a member of the firm of, etc., or a clerk in the office of, etc.,) the attorneys or solicitors for the above named , and as such have a personal knowledge of the facts hereinafter deposed to.

2. That on behalf of the said (appellant or respondent) I have paid , of the of , in the said Province, printers, the sums following for the work mentioned, viz.:

Insert the amount paid printer for printing appeal case appellant's *factum* or respondent's *factum*, also give date when payment or payments were made.

3. That in addition to the foregoing, I have paid the following sums in this appeal, viz.:

4. That with regard to the foregoing disbursements, I believe that the amount so paid for printing is fair and reasonable, and is the usual and lowest price for which that class of work can be done in the said of and that the foregoing amounts further paid as aforesaid were reasonable and proper disbursements in the appeal.

Sworn before me at the
of in the Province of
this day of , A.D. 19

A Commissioner in H.C.J., etc.

Form 13.

JUDGMENT FOR COSTS.

After acceptance of money paid into Court.

(Title, Date, etc.)

The defendant having paid into Court in this action the sum of \$ in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the day of , 19 accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within 48 hours after the said taxation.

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

Form No. 14.

JUDGMENT FOR DEFENDANT'S COSTS ON DIS-
CONTINUANCE.

In the

Between A.B., Plaintiff
and
C.D., Defendant.

The day of , 19 .

The plaintiff having by a notice in writing dated the day of , 19 , wholly discontinued this action (or, withdrawn his claim in this action for), or withdrawn so much of his claim in this section as relates to (or as the case may be).

It is this day adjudged that the defendant recover against the plaintiff costs, to be taxed.

The above costs have been taxed and allowed at \$, as appears by a (taxing officer's) certificate dated the day of , 19 .

Form No. 15.**JUDGMENT FOR PLAINTIFF'S COSTS AFTER CON-
FESSION OF DEFENCE.**

In the

Between A.B., Plaintiff
and
C.D., Defendant.

The day of , 19 .

The defendant in his defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the day of , 19 , delivered a confession of that defence: It is this day adjudged that the plaintiff recover against the defendant costs, to be taxed.

The above costs have been taxed and allowed at \$, as appears by a (taxing officer's) certificate dated the day of , 19 .

Form No. 16.**JUDGMENT FOR COSTS AFTER ACCEPTANCE OF
MONEY PAID INTO COURT.**

IN THE

Between A.B., Plaintiff,
and
C.D., Defendant.

The day of , 19 .

The defendant having paid into Court in this action the sum of \$ in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the day of , 19 , accepted the sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within forty-eight hours after the said taxation.

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at \$, as appears by a taxing officer's certificate dated the day of , 19 .

Form No. 17.**JUDGMENT FOR PLAINTIFF'S COSTS.**

After Confession of Defence (Ontario Rule 295).

(Title, Date, etc.)

The defendant in his statement of defence herein, having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the day of , 19 , delivered a confession of that defence.

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed (or \$ for costs).

Judgment signed the day of , 19 .

(Signature of Officer.)

The following may be appended at or after the signing of the judgment on production of the taxing officer's certificate:

The above costs have been taxed and allowed at \$, as appears by a taxing officer's certificate dated the day of 19 .

(Signature of Officer.)

Form No. 18.**JUDGMENT FOR DEFENDANT'S COSTS. ON
DISCONTINUANCE.**

(Title, Date, Etc.)

The plaintiff having by a notice in writing dated the day of 19 , wholly discontinued this action (or withdrawn his claim in this action for or withdrawn so much of his claim in this action as relates to or as the case may be.)

It is this day adjudged that the defendant recover against the plaintiff costs to be taxed (or \$ for costs).

Form No. 19.

**JUDGMENT ALLOWING SET-OFF OF COSTS ON HIGH
COURT SCALE AGAINST COSTS ON DIVISION
COURT SCALE.**

(Formal Parts).

1. This Court doth order and adjudge that the said defendant C. D. do pay to the plaintiff, the sum of \$ and costs on the Division Court scale, and that the defendant C. D. be entitled to set-off against such sum and costs, the costs of action of the said defendant as between solicitor and client upon the High Court scale, and that the plaintiff do pay to the said defendant the excess, if any, in his favour forthwith after taxation.

(Signature of officer.)

Form No. 20.

JUDGMENT—COSTS OUT OF ESTATE.

IN THE HIGH COURT OF JUSTICE.

The Honourable Mr. }
Justice

day the day of
19 ,

Between A. B., Plaintiff,
and
C.D., E.F. and G.H., defendants.

1. This action coming on for trial upon the day of 19 , before this Court at the sittings thereof for the trial of actions without a jury, holden by the Honourable Mr. Justice , at , in presence of counsel for plaintiff and the defendants, upon hearing read the pleadings, upon hearing the evidence adduced and what was alleged by counsel for all parties, and this Court having reserved judgment until this day, and the same now coming on for judgment.

2. This Court doth declare that the property devised and bequeathed to deceased, in the pleadings mentioned in and by the last will and testament of deceased, was so devised and bequeathed to her, the said absolutely and free from any trust, and doth order and adjudge the same accordingly.

3. And subject to the declaration aforesaid, this Court doth further order and adjudge that this action be and the same is hereby dismissed.

4. And this Court doth further order and adjudge, that the costs of the action of all parties, including those of the official guardian *ad litem*, to be paid to them out of the estate of the said deceased, by the defendants C.D. and E.F. as executors, forthwith after taxation thereof. And the said defendants, the executors, are to be at liberty to retain out of the estate of the said their costs to be taxed as between solicitor and client.

(Signature of officer signing the judgment.)

Form No. 21.

ORDER FOR SECURITY FOR COSTS OF ACTION.

Issued on Precept (Ontario Rule 1199).

IN THE HIGH COURT OF JUSTICE.

day the day of 19

Between A.B., Plaintiff,
and
C.D., Defendant.

Upon application of the defendant, and it appearing by the indorsement on the copy of the writ of summons served on said defendant that the said plaintiff resides at out of the jurisdiction of this Court:

1. It is ordered that the plaintiff do within four weeks from the service of this order give security on his behalf in the penal sum of four hundred dollars, to answer the defendant's costs of this action, and that all proceedings be in the meantime stayed.

2. And it is further ordered that in default of such security being given by the plaintiff this action be dismissed (where there are several defendants as against such defendant) with costs, unless the Court or a Judge upon special application for that purpose otherwise orders.

(Signature of Officer.)

Form No. 22.**CERTIORARI.***(Notice to Abandon Proceedings.)*

To (the informant) of the of in the
County of .

Take notice that hereto annexed and served on you herewith, is a true copy of a notice served on C.D., Esquire, police magistrate, (or one of His Majesty's justices of the peace) for the of of a motion for certiorari to issue out of the High Court of Justice, directed to the said magistrate (or justice), and to the Clerk of the Peace for the County of for the removal into the said High Court of Justice of the record and conviction of A.B. upon the information of you, the said for that he did on the day of A.D. 19 , at the of in the County of unlawfully (set out the charge).

And take notice that unless the said conviction, and the prosecution thereunder, be forthwith abandoned by you, and and notice given by you to the said A.B., or to me as his solicitor to that effect with your consent to the quashing of the proceedings, the said A.B. will apply to the Court on the quashing of the said conviction for an order that you pay the costs of the further proceedings necessary in the premises.

Dated this day of , A.D. 19 .
(Solicitor for said A.B.)

Form No. 23.

**ORDER ON CLIENT'S APPLICATION TO TAX
SOLICITOR'S BILL**

In the

Between A.B., Plaintiff,
and
C.D., Defendant.

In the matter of the taxation of costs, and in the matter of gentlemen, one of the solicitors of the Supreme Court.

It is ordered that the bill of fees, charges and disbursements delivered to the applicant by the above named solicitor be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received of

or on account of the applicant, and that he refund what, if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that if the said solicitor attends on the taxation, the taxing officer tax the costs 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 costs of the reference, to be charged (if payable) according to the event of the taxation, pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the applicant of what (if anything) may appear to be due to the said solicitor, the said solicitor do (if required) deliver up to the applicant, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody or power, belonging to the applicant.

And it is ordered that the costs of this application be

Dated the day of , 19 .

Form No. 24.

ORDER ON SOLICITOR'S APPLICATION TO TAX BILL OF COSTS.

In the

Between A.B., Plaintiff,
and
C.D., Defendant.

In Chambers.

In the matter of the taxation of costs, and in the matter of gentlemen, one of the solicitors of the Supreme Court.

Upon hearing and upon reading the affidavit of ,
filed the day of , 19 , and .

It is ordered that the above named solicitor's bill of fees, charges, and disbursements, delivered to (hereinafter called the said client) be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received from or on account of the said client, and that he refund what (if anything) he may on such taxation appear to have been overpaid.

And it is further ordered that the taxing officer tax the costs 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 costs of the reference, to be paid according to the event of the taxation, pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the said client of what (if anything) may appear to be due to the said solicitor, the said solicitor do (if required) deliver to the said client, 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.

And it is ordered that the costs of this application be

Dated the day of , 19 .

Form No. 25.

ORDER TO TAX AFTER ACTION BROUGHT.

In the

Between A.B., Plaintiff,
and
C.D., Defendant.

Upon hearing and upon reading the affidavit of
filed the day of , 19 , and .

It is ordered that the plaintiff's bill of costs, charges and disbursements delivered to the defendant for the recovery of which this action is brought, be referred to the taxing officer to be taxed, and that the plaintiff give credit of the time of taxation for all sums of money by him received from or on account of the defendant.

And it is further ordered that the taxing officer tax the costs of the reference, and certify what upon such reference shall be found due to or from either party in respect of the bill and demand, and of the costs of the reference, pursuant to the statute.

And it is further ordered that the plaintiff do not prosecute this action touching the demand pending the reference.

And it is further ordered that upon payment of what (if anything) may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid), all further proceedings therein be stayed, and that the costs of this application be

Dated the day of , 19 .

Form No. 26.**CHARGING ORDER (SOLICITORS' COSTS).**

In the

Between A.B., Plaintiff,
and
C.D., Defendant.

Upon hearing and upon reading the affidavit of
filed the day of , 19 , and .

It is ordered that the said , the solicitor for the
in this action shall have a charge upon for his costs,
charges, and expenses of and in reference to this action.

Dated the day of , 19 .

Form No. 27.**ORDER TO TAX SOLICITOR'S BILL.**

After Action Brought.

(Formal parts.)

1. It is ordered that the plaintiff's bill of costs, charges and disbursements, delivered to the defendant, for the recovery of which this action is brought, be referred to to be taxed, and that the plaintiff give credit at the time of taxation for all sums of money by him received from or on account of the defendant.

2. And it is further ordered that the taxing officer tax the costs of the reference and certify what upon such reference shall be found to be due to or from either party in respect of the bill and demand and of the costs of the reference, pursuant to the statute.

3. And it is further ordered that the plaintiff do not prosecute this action touching the demand pending the reference.

4. And it is further ordered that upon payment of what (if anything) may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid) all further proceedings therein be stayed, and that the costs of this application be .

Form No. 28.**ORDER TO TAX BILL OF COSTS ON THE APPLICATION OF CLIENT.**

(Formal parts omitted.)

In the matter of
Upon the application of _____, of the _____ of _____ in
the County of _____.

Upon reading _____, and upon hearing what was alleged, etc.

1. It is ordered that the bill of fees, charges and disbursements delivered to the applicant by the above named solicitors to be referred to _____, Esquire, one of the taxing officers of the Supreme Court of Judicature for Ontario to be taxed.

2. And it is further ordered that upon such reference the said _____ do take an account of all sums of money received by the said solicitor from or on account of the applicant.

Order to tax issued on præcipe. See Ontario Rule 1184.

Form No. 29.**ORDER TO TAX BILL OF COSTS ON THE APPLICATION OF THE SOLICITOR.**

(Formal parts omitted.)

Upon the application of the above named solicitor and upon hearing what was alleged on his behalf, it is ordered that the bill of fees, charges and disbursements rendered by the said solicitor to _____, be referred to _____, Esquire, one of the taxing officers of the Supreme Court of the Judicature for Ontario to be taxed.

And it is further ordered that upon such reference the said taxing officer do take an account of all moneys received by the said solicitor from or on behalf of the said _____ in connection with the said _____.

Order to tax issued on præcipe. See Ontario Rule 1184

Form No. 30.

ORDER FOR DELIVERY AND TAXATION OF
SOLICITOR'S BILL OF COSTS.

(RULE 1184).

Title, Date, Etc.

Upon the application of _____, and the applicant hereby submitting to pay what, if anything, shall be found due to the said solicitor upon the taxation of the bill hereinafter mentioned.

1. It is ordered that the above named solicitor do, within fourteen days from the service of this order, deliver to the applicant a bill of his fees, charges and disbursements, and that the same, when delivered, be referred to the _____ to be taxed.

Form No. 31.

AFFIDAVIT OF NON-PAYMENT OF COSTS.

(Formal parts).

I, A.B., etc., make oath and say :—

1. I am a member of the firm of _____, solicitors for the above named plaintiffs.

2. The costs of the said plaintiffs herein have been taxed and allowed at \$ _____.

3. I have not received, nor to the best of my knowledge, information and belief has my partners, or anyone on behalf of my said firm, received the said sum of \$ _____, or any part thereof, and the whole of the said sum of \$ _____ remains unpaid and due to my said firm for costs herein.

Sworn, etc.,

}

Form No. 32.

WRIT OF FIERI FACIAS ON A JUDGMENT OR ORDER
FOR COSTS.*(Court and Style of Cause.)*

EDWARD VII., &c., &c.

To the Sheriff of _____, Greeting:

We command you that of the goods and chattels and lands and tenements of _____ in your bailiwick you cause to be made the sum of \$ _____, for certain costs which by a judgment (or an order) or our High Court of Justice, dated the _____ day of _____, 18____, were adjudged (or ordered to be paid by the said _____ to _____, and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of six per centum per annum, from the _____ day of _____, 18____, (the date of the certificate of taxation), and that you have before the Justices of our High Court, at Toronto, so much of the said sum and interest as you shall have made from the said goods and chattels immediately after the execution hereof, and so much thereof as you shall have made from the said lands and tenements immediately after the expiration of twelve months from the day of your receipt hereof, to be rendered to the said _____. And in what manner you shall have executed this our writ, make appear to us immediately after the execution hereof. And have there then this writ.

Witness, etc.

Place of issue in the margin and indorsements, etc.

Form No. 33.

WRIT OF FIERI FACIAS TO MAKE COSTS TAXED
TO DEFENDANTS.

IN THE HIGH COURT OF JUSTICE.

Between A.B., Plaintiff,
and
C.D., Defendant.Edward VII. by the Grace of God, of the United Kingdom
of Great Britain and Ireland, King, Defender of the Faith.

To the Sheriff of Greeting.

We command you that of the goods and chattels and lands and tenements of the above named plaintiff A.B., in your bailiwick, you cause to be made the sum of \$ and also interest thereon at the rate of six per centum per annum from the day of , A.D. 19 , which said sum of money and interest were lately before us in our High Court of Justice, in a certain action, wherein the said A.B. is plaintiff and the said C.D. is defendant, by a judgment (or order) of our said Court bearing date the day of , A.D. 19 , adjudged to be paid by the said A.B. to the said C.D. for his taxed costs of defence in said action, and that you have before us in our said Court at Toronto so much of that money and interest as you shall have made from the said goods and chattels immediately after the execution hereof, and so much thereof as you shall have made from the said lands and tenements immediately after the expiration of twelve months from the day of your receipt hereof, to be paid to the said C.D. in pursuance of the said judgment (or order).

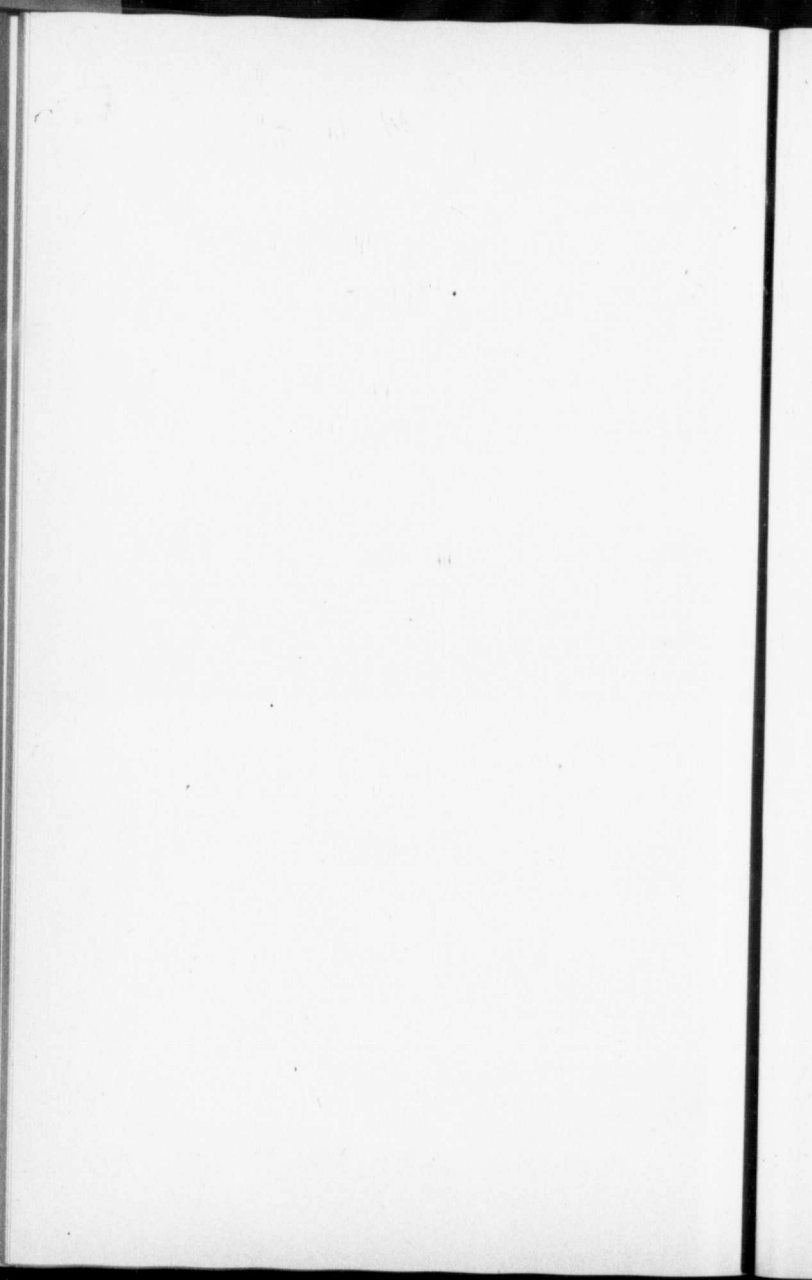
And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof, and have you there then this writ.

Witness the Honourable President of our said Court,
at Toronto, the day of in the year of our Lord
one thousand nine hundred and and in the year of
our reign.

(Signature of officer).

Place of issue in margin.

Indorsement: This writ was issued by, etc.



INDEX.

A.

Abandoned Motions

- Costs of affidavits, 3
- Cost of, etc., 2
- Notice of intention to apply for costs, 2
- Party serving motion may countermand, 2
- Taxation of costs of, 2, 133
- Where motion served but not set down, 2
- Where party serving does not appear, 2

Abandonment of Rule

- Notice of abandonment, 3
- Motion for, 3

Abandoning of Appeal (*See Appeal*)

- Costs of, 2
- Effect of not giving security, 2
- Effect of not setting down appeal, 2

Abortive Proceedings

- Costs of not taxable, 1
- Where party not responsible for, 1
- Mortgage sale abortive, 1, 136
- Trial where abortive, 1, 2

Absconding Debtors

- Costs where defendant not an, 1
- When costs payable by plaintiff, 1

Abstract of Title

- Costs of obtaining, 3
- Neglect to verify by vendor, 3
- Power of master in such case, 3
- Where purchaser acts unreasonably, 3
- Where good title cannot be given, 3

Actions

- Several by one plaintiff, 4
- Costs of, 4
- Consolidation of, 138
- When costs follow event of, 25, 62, 63, 84

Actions on Bond (*See Bond*)

- Costs of several actions on one bond, 4
- Can bring action although nothing paid, 4
- Liability to pay sufficient, 4

Actions Dismissed with Costs

- Taxing officer may tax without order where, 5
- Taxation may be prohibited by judge, 5

Adjournments (*See Costs Generally*)

- At chambers, costs of, 5
- Of trial, costs of (*See Trial*), 5
- Motion for adjournment of trial, 5

Administration Actions

- Advice of court in, 8
- Commission in lieu of costs in, 6, 60
- Commission on the whole amount accounted for, 6

Administration Actions—Continued

- Court can increase commission in, 6
- Court may order costs taxed, 6, 7
- Creditor's costs in, 7
- Defending in good faith, costs of, 8
- Improper proceeding in, costs of, 7
- Master has no power to increase commission, 6
- Residuary legatee plaintiff entitled to costs in, 7
- Trustee entitled to costs in, 7
- Unnecessary proceedings, costs of, 8, 268

Admissions

- Costs occasioned by refusal to admit, 8
- For purposes of action, 9
- Notice to admit when necessary, 8
- Notice to admit, costs of, 9
- Proof where notice to admit not given, 10
- Refusal to admit, costs of, 11
- Saving expense, in not giving notice, 10

Advertisement for Sale

- Improperly drawn, costs of, 4
- Referred back to master, 4

Affidavits

- Attendances on deponent, 12
- Costs of, disallowed if not mentioned in order, 11
- Costs of unnecessary affidavits, 12
- Drawing, costs of, 12
- Instructions for, 12
- Of disbursements, 12
- Of increase, 12
- Of mileage, 131, 132
- Of service, 12
- Reasonable allowance, for obtaining, 12
- Requisites of, 12
- Scandalous and impertinent matter, 11, 13
- Taking off the files, 265

Agency Letters (*See Letters and Correspondence*)**Alimony Actions**

- Adjournment of, 14
- Application for costs, 14
- Compromise of, 14
- Costs in, how payable, 14
- Counsel fees in, 15
- Undertaking of solicitor in, 14
- Unpaid costs in, 27
- Where plaintiff fails in, 14

Amending Pleadings

- Application to disallow amendment, 16
- Clerical mistake in, 17
- Costs of motion for, 15, 16, 17
- Costs of, in discretion of court, 15
- Costs to follow event generally, 15
- Costs of party amending his own pleading, 18
- Costs of striking out unnecessary matter, 17
- Delivery of amended pleading, 17
- On payment of costs, 18
- Where amendment lengthy, 15
- Without leave, when allowed, 15, 16
- Without order, when allowed, 15
- With order, 16

Amount

- Of security for costs may be varied, 168
- Of security for costs, 167, 171
- Of deposit for security, 168

Appeal as to Costs (*See Taxation*)

- Appeal as to costs alone, 27
- Appeal as to costs in test case, 20
- Appeal as to costs quashed, 26
- Appeal lies from judge's order, 20
- Costs to follow event, 25
- Costs where court equally divided, 25
- Costs where question new, 30
- Court will not interfere unless gross error, 22
- Criminal cases, in, 59, 60
- Evidence on, 30
- Extending time for, 31
- From master's report, 25
- Failure in substantial point, 26
- Foreign corporations, 28
- Good cause for depriving of costs, 30
- In actions for recovery of land, 26,
- In ejectment actions, 23
- Leave to appeal necessary, 19
- Libel actions, in, 21
- No appeal without leave, 18
- No appeal as to costs alone, 19
- No appeal in mortgage sale proceedings, 25
- No costs allowed, 29, 30
- No security given, effect of, 30
- Notice required before, 30
- Ordered to pay costs through neglect, 19
- Poverty of appellant, 24
- Reducing verdict on appeal, 28
- Refusal to extend time for, 24
- Respondent's costs of, 28
- Set off allowed of costs, 21
- To Supreme Court of Canada, 25, 30
- Security for costs of (*See Security for Costs*), 23
- Where judge proceeds on wrong principle, 18
- Where a principle is involved, 25

Appeal Books

- Allowance for revising proofs, 32
- Appellant may be put upon terms, 32
- Costs of printing, 33, 34
- Costs if not printed, 33
- Where respondent prints, 33

Apportionment of Costs (*See Set Off of Costs*)

- Where there is a counter claim, 31
- Of items common to defence and counter claims, 31

Arbitrations (*See References*)

- Allowance of brief on, 251
- Allowance of counsel fees on, 250
- Agreement as to fees of, 34
- Costs of postponement of, 34, 35
- Costs of award of, 35, 219, 223, 243
- Discretions of taxing officer, 35, 250
- Fees to professional arbitrator, 34

Arbitrations (*See References*)—*Continued*

- Fees to non-professional arbitrator, 34
- Fees to witnesses, 34
- Meaning of "arbitrator" and "award," 34
- Unreasonable length of, 250
- Untaxed costs of, 21
- Revision of taxation, 35

Assignee

- Acting under instructions of inspector, 38
- Costs of taxing assignee solicitor's bill, 38
- Costs where insolvent has given chattel mortgage, 41
- Creditors not liable for costs of, 41
- Examination of insolvent, costs of, 93
- Failure to realize on execution for costs, 40
- First execution creditor's costs, 40
- Costs of, 38
- Promise of indemnity required, 41
- May be ordered to pay costs personally, 38
- Removal of, 38

Attaching Debts

- Costs of, discretionary, 41, 230
- Costs of examination of debtor, 41
- Ex parte* application for, 42, 43
- Sheriffs' costs on, 41
- Solicitors' costs on, 41

Attendances

- On deponent, 37
- On return of motion, 37
- On taxation, 37
- Searching affidavits, 37
- To bespeak and for order, 37
- To admit service, 37
- To settle judgment, 37
- To hear judgment, 37
- Unnecessary, 37, 38

Arrest

- Costs of order for, 43
- Order for, 43
- Order for made *ex parte*, 43
- Imposing terms, 43
- Withholding costs of order for, 43

Awards (*See Arbitrations*)

- Costs taxable, when not moved against, 243
- When costs of may be taxed, 44, 219, 223

B.

Bill of Costs (*See Taxation and Solicitor*)

- Ex parte* order for, 45
- Forms of. *See Part II., and Table of Contents*
- "Special circumstances" for taxation of, 44
- Taxation of, after one year rendered, 44

Bill of Exchange

- Cost of several actions on one, 4

Bond (*See Security for Costs*)

- Amount of, 167, 177
- Amount paid on filing, 46
- Filing bonds, costs of, 46
- For security, 164
- Removing bond from files, costs of, 46
- Several actions on one, costs of, 4, 45, 46, 230
- To whom to be given, 161

Briefs

- Allowance for on reference, 251
- Contents of, 47
- Costs of briefing documents, 48
- Costs prematurely incurred, 48
- Costs of discretion of taxing officer as to, 48
- Correspondence, 48
- Disallowance of, in part, 71
- Discretion of taxing officer as to, 48
- Evidence in, 48
- Examination for discovery in, 47
- In chambers, applications, 48
- Superfluous matter in, 48
- Wharton's definition of, 47

British Columbia Tariff of Fees (*See Table of Contents*)**British Columbia Tariff of Disbursements** (*See Table of Contents*)

C.

Cases remitted to County Court

- Costs to follow event, 48
- No costs allowed, 48

Certificate

- Of *lis pendens*, 49
- Of taxation, 238, 243, 244
- Taxing officer can issue during progress of taxation, 49
- Taxing officer to state amount in, 49
(*See Taxation*)

Certiorari

- Costs not given against justice of the peace, 49
- Costs not given against prosecutor, 49
- Form of notice re costs (*See Appendix of Forms*)
- Notice to abandon prosecution, 49
- Successful party entitled to costs in, 49
- Where justice acts improperly, 49

Champerty

- Absence of tariff of costs, effect of, 51
- Against public policy, 50
- Agreement void for, 50
- Need not be punishable as an offence, 50
- Prosecuting claim at solicitor's expense, 50
- Requisites of, 50

Change of Solicitors

- Effect of, 68, 123

Charging Orders

- Costs of, 52
- Nature of, 51, 52
- Refusal of direction, 53
- Solicitor has no absolute right to, 52

Chattel Mortgage

- Agent must file authority, 53
- Costs of realizing on, 53
- No charge for filing agent's authority, 53

Client (*See Solicitor and Client*)**Confessing Defence**

- Arising after action, 53
- Costs up to, 53
- Second action after, 53

Continuing Proceedings

- Where action abated, 53

Contribution between Co-Defendants

- Costs of parties liable, 54
- In the nature of a debt, 54
- Where defendants sever, 54
- (*See Severing Defences*)

Commission in lieu of Costs (*See Administration Actions*)

- Only allowed to parties who could tax costs, 55
- On the whole amount accounted for, 55
- Parties added in Master's Office, costs of, 55

Commission to take Evidence

- Costs of in discretion of taxing officer, 55
- Costs of outside jurisdiction, 55
- Costs of second commission, 55
- Costs where opposite party joins, 55
- Where evidence taken not used, 55

Compromise to Defeat Solicitor's Lien

- As to power of solicitor to compromise, 56
- Where made in good faith, 56
- Where made with intent to defraud, 56

Copies

- Of affidavits, 58
- Of depositions, 57
- Of documents, 56, 223, 233
- Of evidence, 57
- Of interpleader order, 111
- No costs unless notice to admit served, 58
- Only four copies allowed, 56
- Pleadings, copies of, 56, 58, 223, 233
- Where solicitor represents two parties, 58

Costs Generally

- Alimony actions, 14, 15, 27, 67
- "Costs in the cause" what are, 66, 226
- "Costs of the day" what are, 67
- Costs, where action discontinued, 62
- Commission instead of taxed costs, 60
- Delivery of bill of, 62
- Disposal of in chambers, 59, 86
- Enforced by distress, 59
- Liquidators, 60
- In discretion of court, 62, 63
- Notice of action, 65
- Of action tried without jury, 64
- Of party appearing unnecessarily, 69
- On discontinuance, 80

Costs Generally—Continued

- In discretion of court, 62, 63
- Of issues, 63
- Of action tried without jury, 64
- On quashing conviction, 65
- Out of estate, 62
- Of setting down, 69
- Preparing for trial costs of, 62
- Protection of justices as to, 59
- Refusal of, in criminal appeals, 59
- Solicitor and client costs, 61, 210, 211
- Where action tried by jury, 62, 63
- Where costs to follow event, 62, 63
- "Costs of the Cause" (*See Costs and see Taxation*)
- "Costs of the Day" (*See Costs and see Taxation*)

D.**Debtors**

- Costs when payable by plaintiff, 1
- Costs where defendant not an absconding, 1
- Examination of judgment, 76

Defendants

- Appearing severally by one solicitor, 77
- Costs between themselves, 76
- Improperly severing, 77
- Severing defence, 76
- Indemnified, 186

Delivery of Bill of Costs (*See Taxation*)**Disallowing Costs** (*See Unnecessary Proceedings*)

- Of unnecessary proceedings, 78
- Of unnecessary appearance, 79

Disbursements (*See Witnesses*)

- Affidavit of, 12
- Requisites of, 12
- As to maps, etc., 80
- Form of (*See Appendix of Forms*)
- False affidavits of, 79
- For plans on maps, 80
- In alimony actions, 14
- Tariff of (*See Tariffs*)

Discontinuance

- How costs should be taxed, 80
- Costs of, 81

Discretion as to Costs (*See Costs*)

- Costs follow event, 25, 62, 63, 64, 81, 83, 84
- Meaning of, 85
- Of judge, 23, 24, 30, 64, 82, 83, 85, 87
- Of taxing officer, 21, 23, 36, 81, 84, 88, 239, 240, 247, 250, 253, 254
- In jury cases, 86
- Judge cannot delegate, 85
- Judge can impose terms, 85
- Number of witnesses, etc., 86
- Reference to judge, 86
- Wrongful deprival of costs, 82

Dismissal of Action

Costs of, 5

Ditches and Water Courses Act

Costs of award under, 88
Fees to witnesses under, 89
No appeal from judge, 89
Power of judge as to costs, 88

Division Court Actions

Tried in High Court, 60, 61
Tried in County Court, 60, 61

Documents (*See Admissions*)

Costs of procuring, 89
Where costs not allowed, 89

Dower Actions

Costs of motion for judgment in, 89
Plaintiff's costs in, 89

Drainage Actions (*See Scale of Costs*)

On what scale costs should be taxed, 90
Where actions referred, 90, 163

E.

Elections (*See Provincial Elections*)**Entry for Trial**

Costs where record withdrawn, 92
No additional fee unless case withdrawn, 92

Event (*See Costs*)

In jury actions, 64, 114
Meaning of, 25
When costs follow, 25, 61, 62, 63, 81, 83, 84

Evidence

Copies of, 57
Copy required for appeal, 91
Costs of procuring, 91
On appeal as to costs, 30
Where not used, costs of, 21

Examination for Discovery

Costs of, 92, 94, 230
Costs of obtaining allowance of, 92
Disobeying order for, 95
De bene esse, costs of, 242
Instructions for, 93
Production of documents on, 94
When disallowed, 93

Exchequer Court

Jurisdiction of, 29
Tariff of fees

Exceeding \$30.00

To be taxed by taxing officer, 218

Execution

Costs of, 40
Issuing, for costs, 96

Ex Parte Applications

- Costs of, 96
- Not to be given on, 96

Expert Evidence (*See Witnesses*)

- By accountants, etc., 97
- Costs of expense to qualify, 96
- Master's authority to obtain, 96

Fees

- Of solicitors, how regulated, 97, 98
- Tariff of Fees in British Columbia, 405
- Tariff of Fees in Manitoba, 419
- Tariff of Fees in Nova Scotia, 431
- Tariff of Fees in Ontario, 385

Fiats (*See Counsel Fees*)

- Affidavits used on application for, 98
- Attendances necessary on application, 98
- Instructions to apply for, 98
- Letters necessary on application, 98
- No costs allowed for obtaining, 107

Folios

- What is a, 98, 224, 233

Forms (*See Table of Contents*)**Garnishee**

- Costs of discretionary, 98
- Complying with order, costs of, 98

"Good Cause"

- Not shown, 30
- What is, 83, 84

Gross Sum in Lieu of Taxed Costs (*See Administration Actions*)

- In administration actions, 99
- In dower actions, 99
- Master may direct payment of, 99
- May be allowed on interlocutory applications, 99

Guardian (*See Official Guardian*)

- Costs of official guardian, 99
- Costs of guardian *ad litem*, 99

H.**Habeas Corpus**

- Costs of, in discretion of judge, 100
- Judge's order for costs not appealable, 100
- Successful party generally awarded costs, 100
- (*See Certiorari*)

I.**Inferior Court Actions**

- County Court action tried in High Court, 100
- Division Court actions tried in High Court, 60, 61
- When brought in High Court, 100
- Where case removed, 100

Injunctions

- Costs of opposing motion for, 101
- Costs of interim injunction, 101, 102
- Costs where obtained *ex parte*, 102
- Costs where order made continuing, 102

Improperly Incurred Costs (*See Unnecessary Costs*)

- Matter may be referred to taxing officer, 102
- Solicitor liable to client for, 102
- Solicitor may be appointed for client, 102

Inspection of Documents

- Costs of, when allowed, 103
- Costs of, when disallowed, 103, 224, 233
- Where no good reason for, 103

Inspection of Premises

- Costs of, 26
- Costs to abide result, 26, 103

Inspector's Costs

- Costs of adjournments, 104
- Expenses attending court, 103
- Hired or other conveyance, 104
- Other expenses of, 104
- Railway fare of, 104

Interim Costs

- In alimony actions, 14

Instructions

- For affidavits, 104
- For brief, 104, 242
- To defend, 241
- To appeal, 104
- For examination, 104
- For order to produce, 104
- To apply for increased counsel fees, 104
- To file (*lis pendens*), 104
- For reply, 241

Interest

- From verdict, 105
- No part of claim, 105, 106
- None allowed on balance in solicitor's hands, 106
- None on interlocutory orders, 106
- On taxed costs, 106
- Taxing officer has no power to allow, 105
- Untaxed bill of costs does not bear, 106
- When interest on judgment begins to run, 105
- When interest on execution begins to run, 105
- When more than legal rate allowed, 105

Interlocutory Costs

- Cost in the cause, 66
- Costs of interlocutory motion, 107
- Discretion of taxing officer as to, 239
- Set-off of, 107, 108, 109

Interpleader Actions

- Costs of, 40
- Issues, 40
- Power of judge as to costs of, 40
- Sheriff's costs of, 40
- Security for costs on, 40
- Where each party pay their own costs, 40

Issues

- Costs of, 63, 111
- High Court issues, 111
- Interpleader, 40
- In case of several, 111
- Sheriff's fees, 191
- Tried by jury, 111

Investment of Money

- Duty of solicitor, 111
- Liability of solicitor, 112

J,**Joinder**

- Leave to rejoin refused, 113
- Of issue a pleading, 113

Judgment Debtor

- Costs of examination of, 76, 113
- Discretion of judge as to, 113

Judge

- Discretion of, 113
- Discretion of judge as to costs, 23, 24, 30, 64, 82, 83, 85, 87
- Discretion cannot be delegated, 85, 86
- Interpleader actions, as to costs, 40
- Imposing terms, 85
- Judgment debtor discretion of judge as to, 113
- Jury trials, discretion in, 30, 114
- Prohibiting taxation, 5
- Stenographers' fees, certificate of, as to, 216

Judgment

- Entry of, before revision of costs, 128
- For costs, 114
- Interest on, 105
- Without trial costs of, 113

Jury Trials

- Costs to follow event, 114
- Discretion of judge in, 30, 114
- (*See Discretion as to Costs and Event*)

Jury Fees

- To be paid when action entered, 114
- Second payment of, 114

Justice of the Peace

- Actions against, 116
- Power to award costs, 115
- Security for costs in actions against, 115

L.**Land Titles Act**

- Effect of disobeying order, 117
- Enforcement of order for costs, 116
- Payment of costs, 116

Leave to Appeal (*See Appeal*)

Letters

- Advising of examination, 118
- Advising of result of trial, 118
- Advising of motion to change venue, 118
- Advising of money paid into court, 118
- Advising of result of appeal, 118
- Agency (*See Correspondence*), 118
- Fee on correspondence, 118
- In connection with service out of jurisdiction, 117
- Necessary in obtaining decision of taxing officers, 117
- With writ for service, 117

Letters Rogatory

- Must be necessary, 118
- Order for costs of, 118

Libel Actions

- Against publishers, 120
- Apology in, 122
- Costs of, 119
- Costs of evidence not used in, 21
- Frivolous action for, 121
- Meaning of "involves criminal charge," 118, 121
- Publication in, 119

Lien for Costs (*See Solicitor*)

- Cannot be actively enforced, 123
- Effect of client's transfer of fund in court, on, 123
- For agency accounts, 123
- On judgment recovered, 124
- Original solicitors, 123
- Set off not allowed to prejudice solicitors, 122

Liquidator

- Costs of, 60
- Liability for costs, 125
- Security for costs, 270
- Solicitor for, 271
- Where liquidator not a party, 125

Lump Sum for Costs (*See Gross Sum in Lieu of Costs*)**Liquor License Act**

- Costs of commitment, 126
- Magistrate may order defendant to pay costs, 124
- Recovery of costs with penalty, 125
- Recovery of costs where no penalty, 126

M.**Maintenance**

- Defence to, 127
- Nature of, 126
- What amounts to, 127
- Solicitor cannot plead, 127

Maps

- Costs of, 127
- Must be necessary, 127

Manitoba Tariff of Fees (*See Table of Contents*)**Manitoba Tariff of Disbursements** (*See Table of Contents*)

Mandamus

- Costs of, 128
- Discretion of judge as to costs of, 128

Master (*See Taxations and Appeal*)

- Discretion as to costs, 128
- Expert evidence, authority to obtain, 96
- Execution may issue pending revision, 128
- May direct payment of gross sums in lieu of taxation, 99
- Not to insert in report amount of costs until revised, 128
- Power of master as to scale of costs, 165
- Solicitor appointed by, 128
- Where class formed by, 128

Mechanics' Liens

- Amount due should be paid into court, 131
- Contractor's costs, 130
- Costs of establishing lien, 131
- Costs not provided for, 130
- Costs of vacating lien, 130
- Costs where least expensive course not taken, 129
- Counsel fees paid, a disbursement, 130
- Defence by lien holder, 131
- Limit of fees, etc., 129
- Limit of costs, 129
- Limit of costs against plaintiff, 129
- Payments made at owner's risk, 130
- Provisions of act as to costs does not apply to appeal, 130

Mileage

- Affidavit of, 131, 132
 - Requisites of, 132
- Not allowed unless served by sheriff, 132
- Power of taxing officer as to, 132

Misjoinder (*See Plaintiff and Defendant*)

- Costs of, 132, 162, 230

Miscellaneous Tariff (*See Table of Contents*)**Models** (*See Maps and Plans*)**Moderation of Costs**

- Effect of, 133
- Meaning of, 133
- On appeal, 133

Motion (*See Abandoned Motions*)

- Costs in the cause, 134
- Costs where abandoned, 2, 133
- Court or judge may prohibit taxation, 5
- Dismissed with costs, taxation of same, 5
- For further time, 134
- For time to deliver pleadings, 134
- For judgment, 135
- Not necessary to ask for costs in notice of, 134
- Taxing officer can tax without order, 5
- Tacking of mortgage debt, 135
- Tender of costs of, 135
- Tender of costs on, 135
- To extend time, 134
- Unnecessary attendance on, 134
- Where court has no jurisdiction, 134

Mortgage Actions

- Abortive sale, 2
- Costs of, 135
- Costs of an abortive sale, 136
- Costs of insurance, 136
- Tacking to mortgage debt, 135
- Taxation of sale proceedings in appeal, 25
- Where mortgagee sets up wrong claim, 135
- Where mortgagee sells under power of sale, 135
- Where mortgagee also solicitor, 136
- Where there is a special agreement, 136

Next Friend

- Appointment of, 139
- Indemnified, 197
- Liability for costs, 138, 196
- May receive costs, 139

New Trial (*See Trial*)

- Application for, 140
- Delay in applying for, 139
- Granted without costs, 140

No Order for Costs

- Effect of, 140

Non-Payment of Costs

- Staying proceedings for, 140

Non-Suit

- Defendant's liability, 140
- Effect of, 140
- Where set aside, 140

Not Admitting (*See Admissions*)

- Costs of, 10, 11

Notice to Admit

- Costs of where trial adjourned, 140
- Proof where necessary, 10
- (*See Admissions*)

Notices

- Of appeal as to costs, 30
- On application for *certiorari*, 142

Notice of Action

- Allowing costs of preparing, 141
- Costs of, 141
- Proof of, 142
- In libel actions (*See Libel*), 144
- To board of license commissioners, 143
- To registrar of deeds, 143, 144
- To Division Court bailiff, 143
- To corporations, 142
- To justices of the peace, 142, 144
- To constables, 142, 143, 144
- To returning officers, 142
- Under Workmen's Compensation Act, 143
- Want of notice must be pleaded, 143

Nova Scotia Tariff of Fees (*See Table of Contents*)**Nova Scotia Tariff of Disbursements (*See Table of Contents*)**

Official Guardian

- Ad litem*, 145
- Costs of, how paid, 144, 145
- Direction for payment of costs of, 145

"One Day's Notice"

- Meaning of, 22

Ontario Tariff of Fees (*See Table of Contents*)**Ontario Tariff of Disbursements** (*See Table of Contents*)**Orders**

- Appeal from, 145
- Consent orders as to costs, 145
- Leave to appeal from, 145
- To continue proceedings, 53
- Of High Court when appealable, 145
- Obtained on *præcipe*, 146

Over Caution

- Disallowance of costs incurred through, 146
- On party and party taxations, 146
- On solicitor and client taxations, 146

Overholding Tenants Act

- Costs under, 146
- Judges of High Court may make rules as to costs, 146
- No rules made, 146

Partition Actions

- Costs where unnecessary, 147
- Difficult questions of law in, 148
- In lieu of costs, commission allowed, 147
- (*See Administration Actions*)

Payment into Court

- In the alternative by defendant, 148
- Plaintiff refusing to accept, 148
- Result of not accepting, 149
- Where amount paid in insufficient, 148

Payment Out of Court

- Application for refused, 149
- Of amount paid in as security, 149

Party and Party Costs

- What are taxable as, 149
- (*See Taxation*)

Perusals

- Of affidavits, 150
- Of exhibits, 150
- Of interrogatories, 150
- Of joinder of issue, 150

Plaintiffs

- Where one of several fail, 150
- Where successful, 162
- (*See Misjoinder. See Third Party*)

Plans

- Costs of preparing, 150
- Necessity for must be proved by affidavit, 151
- (*See Maps*)

Pleadings

- Amendment of, 151
- Delivery of, 158
- Drawing, 158
- (*See Amendments. See Taxation*)

Poundage

- Amount sheriffs entitled to, 152
- (*See Sheriffs' Fees*)

Poverty of Appellant (*See Appeal*), 24**Postponing Trial**

- Absence of witnesses, 152
- (*See Trial. See Taxation. See Witnesses*)

Practising Without Certificate

- Liability of solicitor for, 152, 197, 200
- (*See Solicitor*)

Precedents of Bills of Costs (*See Table of Contents*)**Printing** (*See Pleadings and Copies*)**Production** (*See Inspection and Admissions*)**Promissory Note**

- Costs of several actions on, 4

Prosecuting or Defending in Person

- Costs where solicitor, 153
- Costs where no solicitor, 153
- Only entitled to disbursements, 153

Provincial Elections

- Cross petition in, 153
- Security for costs, 153
- Sheriff's costs where petition dismissed, 153

Prohibition

- Application for, 153
- Power of court over costs, 153

Proving Documents (*See Admissions*)

Q.

Quieting Titles Act

- Costs of petitioners, 154
- Costs of Inspector of Titles, 154
- Fees payable in stamps, 154
- Fees of solicitor under, 154

Quo Warranto Proceedings

- Costs of, 155
- In County Court, 155
- In High Court, 155

R.

Record

- Withdrawal of, 155
- Where trial postponed, 155

References (*See Arbitrations*)**Refusal to Admit** (*See Admissions*)**Respondent** (*See Appeal and Security for Costs*)

Report (*See Master*)**Retaining Fee of Solicitor** (*See Solicitor*)

- Acting without retainer, 158
- Contracts for, 158, 255
- Disputing, 206
- Joint, 157
- Paid by trustee, 159
- Liability for, 159
- Should be in writing, 156
- When disallowed, 156, 211
- Unpaid, 157

Revision of Taxation

- Administration and partition actions in, 219
- Arbitrations in, 35
- Evidence on, 160
- Judgment pending, 128, 220
- Mortgage actions in, 219
- No sum to be inserted in report until after, 161
- Sheriff's fees of, 191
- Taxing officer, review by, 161
- Taxing officer, power of on, 160
- Taxing officers, duty on, 160, 161
- Taxation to be held open for a reasonable time, 161
- When necessary, 160
- When execution can issue before, 96
- Where costs payable out of an estate, 219

Rogatory Letters

- Must be necessary, 162
- Order for, costs of, 152

Reviving Actions

- Costs of, 162

S.

Scale of Costs (*See Taxation*)

- Agreements as to, 165
- Appeal as to, 164, 165
- Drainage actions costs, how taxed, 90, 91, 164
- In actions against justice of peace, 115
- In determining how far interest is to be included, 105, 106
- Power of master, as to, 165
- Set off allowed on appeal, 21, 22
- Where taxing officer has no jurisdiction as to, 162
- Where goods sold by price list, 162
- Where case transferred, 163

Scandalous Matter (*See Pleadings and see Unnecessary Proceedings*)**Second Argument** (*See Counsel Fees*)**Security for Costs**

- Amount of, 167, 177
- Amount of may be varied, 168
- Appeal against an order for, 66
- Application for amount paid in for, 23
- By bond, 168, 171
- Bond, to whom to be given, 169
- By deposit in court, 168
- By paying money into court, 168
- Consequence of not giving, 168

Security for Costs—Continued

- Discretion of court as to, 175
- Defendant abroad when compelled to give, 166, 170
- Effect of not obtaining, 27
- Effect of not giving, 30
- Foreign corporations, 28
- Foreigner appealing to Divisional Court, 23
- In actions against justices of the peace, 115
- In interpleader actions, 40, 175
- In libel actions, 75, 118, 119, 122, 178, 179
- In provincial elections, 153
- Not required on appeal to Divisional Court, 23
- Order for, issued on *præcipe*, 166
- Parties in position of plaintiffs, 174
- Payment out of, 28
- Persons suing for penalties, 167
- Plaintiff abroad when compelled to give, 166, 170
- Plaintiff insolvent, 166
- Plaintiffs going out of jurisdiction, 174
- Staying proceedings until given, 161
- Time for giving, 167, 170
- Where default made in giving, 167
- When court will order, 166, 170, 172, 173, 174
- When application to be made for, 166, 170

Service of Writs (*See Sheriff's Fees. See Mileage*)**Set off of Costs**

- By solicitors, 107, 108, 109
- Discretion of taxing officer as to, 183, 184
- Of costs, 79, 182, 183, 185
- In different actions, 67, 122
- Prejudicing solicitor's lien, 122
- Setting off interlocutory costs, 181
- Where ordered, 183, 184

Settlement of Action

- Agreement to settle without solicitor's knowledge, 185
- Solicitor's lien for costs on, 186

Severing Defences (*See Defendants*)

- Appearing by different solicitors, 77, 230, 232
- Duty of taxing officer, 186, 218
- Improperly, 76, 218, 230, 232
- When not entitled to costs, 188
- Where two sets of costs allowed, 186, 243
- Where one defendant indemnified, 186, 189
- When entitled to costs, 188

Several Actions on Bond (*See Bond*)**Sheriff's Fees**

- Duty of taxing officer on taxation of, 190
- For abortive attempt to serve, 191
- How taxed and certified, 189
- Not to be collected until taxed, 189
- Revision of, 190
- Taxation of, 189
- Where part, dissatisfied with, 189
- Where issue ordered, 191
- Where goods remain in sheriff's custody, 191

Shorthand Notes (*See Stenographer's Fees*)

Slander Actions (*See Libel Actions. See Discretion as to Costs*)

- Costs follow event in, 114
- Costs wrongly withheld in, 65
- Where verdict small judge refused to disallow costs, 65, 192

Solicitor

- Admission as, 204
- Agreement as to costs with client, 193, 194
- Causing delay, 195
- Changing solicitors, 123, 199
- Commencing action, without authority, 194
- Compromising actions, 194
- Compromise of action by client, 204
- Disputing retainer of, 197
- Lien of for costs, 41, 67, 68, 122, 123, 124
- Lien cannot be actively enforced, 68
- Lien for agency accounts, 68
- Lien on a fund, 68
- Lien not to be prejudiced by set off, 67
- May take out order to tax his own costs, 198
- Misconduct of, 267
- Neglect to take out certificate, 193
- Negligence of, 196, 267
- Order to change, effect of, 68
- Personal liability of, 195
- Practising without certificate, 152, 197, 200
- Preferential lien for costs, 41
- Retainer of, 156, 157, 158, 159, 206, 211, 255
- Right of action for fees as counsel, 192
- Striking off roll, 200, 203
- Suing or depending on person, 136
- Taking proceedings, without authority, 194
- To give credit for amounts received, 205
- Where client not liable for costs, 193

Solicitor and Client

- Appeal from taxation of bill between, 205
- Bill to be signed by solicitor, 207
- Costs, what solicitor and client costs include, 210, 211
- Delivery of bill, 205
- Proceedings stayed during reference, 26
- Proof of delivery of bill, 205
- Taxation of bill, 205
- Taxation after twelve months, 212
- Time for bringing action against client, 44, 205
- Time for delivery of bill, 205
- Reference of bill to taxation, 205
- When bill taxable, 205

Statute of Frauds

- Costs of defence, when pleaded, 214
- Defence of, is a meritorious one, 214

Stay of Proceedings

- Costs of, 196
- No stay for non-payment of costs, 215

Stenographer's Fees

- Certificate of judge as to, 216
- For copies of evidence for counsel, 215, 216
- Payment of, at trial, 215
- Where trial adjourned, 215

Stop Orders

- Costs of obtaining, 217
- Costs of unnecessary notices of, 217
- Liability of party obtaining for costs, 216

Striking Out Pleadings (*See Pleadings*)**Supreme Court of Canada**

- Appeal as to costs, 25
- Quashing appeal as to costs to, 26
- Quashing appeal to, 217
- Will interfere only in case of gross error, 30

Subpoenas (*See Witnesses. See Copies*)**Surveys** (*See Witnesses*)

- Costs of, 241

Taxation

- Appeal, from 22, 214, 228, 239, 244, 245, 246, 249, 252, 253, 254
- Allowance of copy of bill on solicitor and client's taxations, 214, 228
- Application by a person, other than client, for, 206
- Between party and party, 222
- Between solicitor and client, 205, 222, 237
- Contents of order for, 206
- Costs of, where more than 1/6 taxed off, 211
- Discretion of taxing officer, 21, 23, 36, 81, 84, 206, 213, 229
- Duty of taxing officer where parties do not attend, 208
- Effect of offer to accept a definite sum before, 214
- Exceeding thirty dollars, 218
- Form of order (*See Forms*)
- In arbitration, 34, 35
- Judge may order bill to be taxed, 207
- Notice of, 22, 218, 223, 231, 239
- Of bill after twelve months, 212, 251
- Of counsel fees, taxing officer's power as to, 213
- Objections to, 239, 240, 244, 255
- Order for, 205
- Order for obtained on *præcipe* in certain cases, 206
- Payment does not preclude, 209
- Powers of taxing officer, 22, 64, 132, 217, 229, 246
- Party intervening on, liable for costs, 38
- Set-off of costs, power of taxing officer, 64
- Taxing officer may make special certificate, 206
- Under Drainage Act, 90, 163
- Where costs payable out of estate, 62
- Where retainer disputed, 206
- Where commission allowed, 6

Taxing Officer (*See Taxation*)

- Amount of costs, to be stated in certificate, 49
- Can issue certificate during progress of taxation, 49
- Discretion in arbitration actions, 35, 250
- Discretion in allowance for briefs (*See Briefs*), 48
- Discretion of, as to costs, 21, 23, 36, 81, 84, 88, 206, 213, 229, 239, 240, 247, 251, 253, 254
- Duty of, where parties do not attend, 200
- Interlocutory costs, power as to, 107
- May make special certificates, 201
- No jurisdiction, 162
- No power to allow interest, 105

Taxing Officer (*See Taxation*)—*Continued*

- Power of, 22, 64, 132, 217, 227, 246
- Powers of, on review, 160
- Review of taxation by, 161
- Set off of costs, power of, 183, 184
- Severing defences, duty of, 186, 218
- Taxing without order, 51
- Witness fees, duty of, as to, 272, 273, 279, 282

Tender

- After action brought, 257
- Before action brought, 257
- On serving petition, 256
- Of costs, 257
- \$5.00 may be tendered in certain cases, 257
- Effect of such tender, 256, 257
- On serving petition, 256

Term Fees

- When taxable, 258

Third Party

- Court has complete jurisdiction over costs, 258, 262, 263
- Defendant may be ordered to pay costs of, 258, 262
- May be allowed costs, 258
- May be ordered to pay costs, 262
- Plaintiff may be ordered to pay costs of, 258, 262
- When not entitled to costs, 258, 261, 262, 263
- Where action appealed, not entitled to costs, 262, 263

Trial

- Absence of judge, 240
- Abortive, 83, 240
- Adjournment of, 5, 260
- Costs of new trial, 259
- Costs of postponing trial, 66
- Costs of the day, 67
- Misdirection of judge at, 259
- Where jury disagree, 259
- Where plaintiff wrongly nonsuited, 140

Unnecessary Proceedings

- Action instead of motion, 268
- Costs occasioned by, 264
- Costs of printing unnecessary material, 268
- Duty of taxing officer, 225, 234, 264, 265, 267
- Executor bringing action unnecessarily, 267
- In administration actions, 268
- Negligence of solicitor, 267
- Negligence, 264
- Overcaution through, 264
- Mistake, 264
- Motion to take pleadings off file, 265
- Multiplication of orders, 265
- Motion made to court instead of chamber, 267
- Partition actions in, 267
- Unnecessary matter in writ, etc., 264
- Costs disallowed, 224, 234, 264
- Unnecessary appearances on motion, 224

Vendor and Purchaser

- Rescinding contract of sale, costs of, 269
- Security for costs, 270

Venue

Costs of changing, 66

Vesting Order

Costs of, motion for, 269

Costs of, where vendor out of jurisdiction, 269

Purchaser entitled to costs of, 269

Vexatious Proceedings

Disallowance of costs of, 224, 268

Irrelevant depositions, 268

Unnecessary litigation, effect of, 268

Want of Parties

Costs of application to add for, 271

Objection, at hearing, 271

Witnesses

Action by for fees, 276

Conduct money of, 276

Demand for expenses before giving evidence, 276

Fees of, where parties to suit, 277, 278

Foreign, 275, 279

Not present at trial, 272

Not attending trial, 275

Number of, 86, 273

Professional, 272, 273, 274, 275, 279

Same, in two trials, 274

Scientific, 227, 235, 279, 280, 281,

Subpoena for, only one taxable, 272, 276

Unnecessary, 274, 280, 282

Where not called, 272, 273, 274, 275, 279

Witness Fees

Accountant, 227, 235, 278, 279

Appeal from Court of Revision, 221

Arbitrations in, 34

Court officials, 272

Disallowance of, 282, 273, 281

Duty of taxing officer, 272, 273, 279, 282

Effect of not paying, 276

Of public official, 272, 273

Of solicitor, 272

Of interpreter, 272, 279

Paid by both parties, 272

Physicians, 273

Surveyors, 235, 274, 275, 279, 227

To be paid before taxation, 272

Taxation of, 272

Where trial postponed, 275

Writ of Summons

Affidavit of service of, 283

Costs of printing, 57

Endorsement of residence on, 284

Only four copies can be taxed, 58

Special endorsement on, 285

Tendering the amount sued for, 283

