THE

ONTARO WEEKLY REPORTER

VOL. X. TORONTO, AUGUST 22, 1907. NO. 13

RIDDELL, J. JULY 5TH, 1907.

CHAMBERS.

RE BOYD v. SERGEANT.

Division Courts — Jurisdiction — Division Courts Act, sec. 190—Action Brought in Wrong Court as against Garnishees—Abandonment at Trial of Claim against Garnishees—Objection to Jurisdiction by Primary Debtor—Saw Logs Driving Act, sec. 16—Common Law Cause of Action — Decision of Division Court Judge — Right to Review.

Motion by defendant for prohibition to the 1st Division Court in the district of Algoma.

J. A. Paterson, K.C., for defendant.

W. E. Middleton, for plaintiff.

RIDDELL, J.:—The action as originally framed added the Maitland and Dixon Co. as garnishees. Admittedly the action was not brought in the right Court as against the garnishees: sec. 190 of the Division Courts Act, R. S. O. 1897 ch. 60. No notice disputing the jurisdiction was filed by the primary debtor, but the garnishees filed such a notice. At the trial counsel for the primary debtor objected to the jurisdiction of the Court, whereupon plaintiff abandoned all claim against the garnishees. Counsel for the primary debtor objected to this, and contended that the section (190) was imperative, and that the Court could not obtain jurisdiction by allowing such amendment. He did not, it appears, ask for an enlargement, or require the re-service of the summons,

and the case was fought out on the merits. The Judge reserved his decision, and subsequently gave judgment for plaintiff. A motion for a new trial was refused, and a motion is now made for prohibition.

In addition to the objection already mentioned, it was urged that this is an action under the Saw Logs Driving Act, R. S. O. 1897 ch. 143, and that the jurisdiction of the Court is ousted by sec. 16 of that Act.

The Judge in the Court below, from a consideration of the case, came to the conclusion that an action lay at the common law and independent of the statute; and therefore overruled the objection.

In the view I take of the case, I do not think that I am called upon to examine into the correctness of this decision. The principles upon which a motion of this kind should be disposed of have been very recently considered . . . in Re Township of Ameliasburg v. Pitcher, 13 O. L. R. 417, 8 O. W. R. 915, and Re Errington v. Court Douglas, 14 O. L. R. 75, 9 O. W. R. 675, and I adhere to all that was said in these cases. In determining whether a certain state of facts gives a cause of action at the common law, the Judge below "may . . . mis-decide the law as freely and with as high an immunity from correction, except upon appeal, as any other Judge:" Re Long Point Co. v. Anderson, 18 A. R. 401, 408. . . .

I do not suggest that the decision is unsound. Considerable support for it may be found in Drake v. Sault Ste. Marie Pulp and Paper Co., 25 A. R. 251; and I do not find that Cockburn v. Imperial Lumber Co., 26 A. R. 19, 30 S. C. R. 80, decides anything to the contrary.

As to the other ground, I do not think that sec. 190 of the Division Courts Act prevents the Court from having, or acquiring, if the word be preferred, jurisdiction: In re Sebert v. Hodgson, 32 O. R. 157.

The motion fails and will be dismissed with costs.

RIDDELL, J. JULY 5TH, 1907.

CHAMBERS.

RE BARTELS.

Extradition—Habeas Corpus—Motion for Discharge—Escape of Prisoner from Custody of Sheriff while Motion being Heard—High Contempt and Crime—Motion Retained Pending Re-arrest and Proceedings against Prisoner for Escape.

Motion by Herman Bartels senior, upon the return of a habeas corpus, for an order for his discharge from custody under a warrant for his extradition to the State of New York to answer a charge of perjury.

H. H. Dewart, K.C., and N. Sommerville, for Bartels.

T. D. Cowper, Welland, for the State of New York.

RIDDELL, J.:—Bartels, a very wealthy brewer of the State of New York, was, in the Supreme Court at Auburn in that State, in May, 1905, convicted of an attempt to commit arson in respect of a brewery or malt house with intent to defraud the insurance companies. Sentence being deferred, he was admitted to bail in the sum of $15,000, and escaped. His bail being forfeited and an action brought upon the bail bonds and verdict given against the defendants, the sureties, their attorney settled the action by paying $6,000. At the time it was expressly stipulated that this was simply a settlement of the bail bond, the Board of Supervisors having resolved that the criminal proceedings were in no way to be interfered with. This was some time in or after October, 1906. In the meantime, in May, 1906, an indictment had been found against Bartels in the same Court charging him with perjury, alleged to have been committed by him upon his trial for attempt to commit arson.

Bartels was in the province of Ontario at least part of the time. In May, 1906, a bench warrant was issued by the proper officer of the said Court for the arrest of Bartels with a direction to bring him before the Court upon the indictment for perjury.

He was arrested on or about 1st May, 1907, at Niagara Falls, Ontario, by the chief of police, and, after proceedings

unnecessary here to consider, the Judge of the County Court of Welland, as extradition commissioner, issued his warrant under sec. 18 of the Extradition Act, R. S. C. 1906 ch. 155, for the committal of Bartels to prison for surrender to the United States.

On 27th June I granted a writ of habeas corpus, expressly stipulating that the production of the prisoner should be waived, and this waiver was expressly agreed to. On 4th July the case was argued before me, and I reserved judgment.

Being informed by an officer of the Court that Bartels had been in Toronto, and had during the time of the argument escaped from custody, I caused the registrar to require the sheriff of Welland, in whose custody the prisoner was, to produce the prisoner before me, whereupon the registrar was this morning informed that Bartels at noon yesterday had escaped from the sheriff, and had not yet been re-arrested. So much is before me officially. In addition, I have been informed by an officer of the Court that the sheriff of Welland brought the prisoner to Toronto at his request; that he brought him into Court at Osgoode Hall; that, being alone in the charge of him, he went to a closet, leaving his prisoner alone in the hall; that upon his emerging he found the prisoner had escaped. Whether these statements are true, I do not know judicially.

By the common law any one who is arrested and gains his liberty before he is delivered by due course of law is guilty of an escape, and any one who, being in lawful custody, frees himself from it by any artifice and eludes the vigilance of his keeper, is guilty of an offence in the nature of a high contempt, and punishable by fine and imprisonment: Russell on Crimes, vol. 1, ch. 30, p. 567. And our Criminal Code, R. S. C. 1906 ch. 146, sec. 190, provides that "every one is guilty of an indictable offence and liable to two years' imprisonment who, being in lawful custody . . . on any criminal charge, escapes from such custody.

Bartels has apparently treated with contempt the laws of the country in which he sought an asylum. Therefore, without considering the arguments advanced or my power to deal with the application, I retain the motion until he has been proceeded against for his violation of these laws, leave being reserved to apply to me upon a change of circumstances: see Re Watts, 3 O. L. R. 279, 1 O. W. R. 129, 133.

In the meantime I take it for granted that he will be searched for with the utmost diligence. The last man in Canada and the last dollar in the treasury should be at the disposal of the Crown authorities in their efforts to re-arrest this fugitive from the laws of two countries. Our national reputation and the good name of our province and Dominion are at stake. It requires no great effort of the imagination to picture the angry indignation with which the people of Canada would view a similar occurrence if a convicted criminal were to flee from Canada to the United States and there be permitted to escape as this convict was here when sought in extradition upon another charge. If we are to retain the respect of other nations, and our own—if we are to continue to boast with justice of impartial and effective administration of justice, it is of the last importance that this man and all — if any there be — who are accessories to or aiding and abetting in his offence against our law, be found and prosecuted with unrelenting rigour.

And here and now there can be no question of sympathy to be felt for a poor refugee alleged to have been harshly dealt with by his own people; it is here the case of a fugitive from the laws of his own land brazenly setting ours at open defiance.

It is possible that the interval will be utilized by those charged with the conduct of the extradition proceedings in healing the alleged defects—as to whether the alleged defects are real, I say nothing at present.

RIDDELL, J. JULY 6TH, 1907.

CHAMBERS.

ARMSTRONG v. CRAWFORD.

Pleading—Counterclaim—Motion to Strike out—Irregularity—Co-defendants — Convenience — Trial — Relief Asked—Setting aside Judgments—Declarations of Ownership—Mining Leases—Agreements.

Appeal by defendants Thomas Crawford and S. R. Clarke from order of Master in Chambers striking out the counter-

claim of the appellants against defendants Murdoch McLeod, Donald Crawford, and John McMartin.

S. R. Clarke, for appellants.

J. B. Holden, for defendants Murdoch McLeod, Donald Crawford, and John McMartin.

D. Urquhart, for plaintiff.

RIDDELL, J..—Plaintiff brings his action against 6 defendants, Nos. 2, 3, 4, 7, and 8, and the administratrix of 5, as set out hereafter. He alleges that before 29th September, 1904, he (1) and defendant Donald Crawford (2) made a verbal agreement (A) for him to advance Donald Crawford (2) moneys and to have equally with Donald Crawford (2) in mining claims in which the latter might be interested, and that he (1) did advance some money accordingly.

Then it is alleged that defendants Donald Crawford (2), Thomas Crawford (3), and Murdoch MeLeod (4), made a verbal agreement (B) whereby they were to have an equal interest in discoveries they made; that Donald Crawford (2) and Murdoch McLeod (4) did prospect and plant a post in the mining location known as the Lawson mine, which I shall call X; that Thomas Crawford (3) got a mining location and subsequently a patent of this X. The statement of claim goes on to allege that Donald Crawford (2) and Murdoch McLeod (4) pretend that they made an agreement (C) with John McLeod (5) that John McLeod (5) was to have an equal share with Donald Crawford (2), Murdoch McLeod (4), and Thomas Crawford (3), in this location X. Then it is said that on 29th September, 1904, Donald Crawford (2), applying for more money to the plaintiff (1), gave a written transfer (D) to plaintiff (1) of a half interest in the shares held by Donald Crawford (2) in 4 mineral claims, amongst them X. At this moment Donald Crawford (2), Thomas Crawford (3), and Murdoch McLeod (4) were entitled to apply for a lease or patent of X. Afterwards Thomas Crawford (3) obtained the lease, and subsequently the patent, but in trust for Donald Crawford (2), Murdoch McLeod (4), and plaintiff (1).

Then Donald Crawford (2) and Murdoch McLeod (4) began an action against Thomas Crawford (3) and one Herbert E. Lawson (6) for a declaration that Thomas Crawford (3) held the lease in trust for Donald Crawford (2) and

Murdoch McLeod (4); and John McLeod (5) and his committee began an action against Thomas Crawford (3) and others to have it declared that John McLeod (5) was entitled to a quarter interest in X. These actions were tried and judgment given declaring that Donald Crawford (2), Murdoch McLeod (4), and John McLeod (5), were each entitled to a quarter interest. Plaintiff (1) was no party to these actions. No conveyance has been made to Donald Crawford (2).

The statement of claim ends by alleging that on 13th July, 1905, Donald Crawford (2), Murdoch McLeod (4), and John McLeod (5), entered into an agreement (E) with John McMartin (7) giving him an option to buy their interest in X, but this was without the knowledge or consent of plaintiff, and that John McMartin (7), before he exercised his option, had full notice and knowledge of plaintiff's claim.

S. R. Clarke (8) is made a defendant in the style of cause, but he seems to have been forgotten; at all events, he is not named or referred to in any way except in the style of cause.

The prayer of the statement of claim is that plaintiff (1) be declared entitled to a one-sixth interest in the location X.; i. e., ignoring the alleged rights of John McLeod (5), plaintiff alleges that Donald Crawford (2), Thomas Crawford (3), and Murdoch McLeod (4), were the owners each of one-third, and he (plaintiff) was entitled to half of that held by Donald Crawford (2). A further prayer is that it may be declared that the agreement (E) is not binding upon plaintiff. An injunction, an account, and general relief, also are claimed. . . .

Then Thomas Crawford (3) and S. R. Clarke (8) file a defence and counterclaim. They admit agreement (B), apparently deny the existence of (C), admit the actions and the result, that plaintiff was not a party and was not bound by these, and also the fact that no conveyance has been made to Donald Crawford (2), and that the agreement (E) had been made. They specifically deny that Thomas Crawford (3) took as trustee for Donald Crawford (2), Murdoch McLeod (4), John McLeod (5), or any of them; say they had no knowledge or notice of agreement (A) or agreement (D), or any advances to Donald Crawford (2), until the

trial of the actions referred to. They say that after (B) was entered with Donald Crawford (2) and Murdoch McLeod (4) began prospecting and were joined by John McLeod (5), and a number of discoveries were made; that Murdoch McLeod (4) and John McLeod (5) applied for a lease of a discovery immediately south of and adjoining X; that Thomas Crawford (3) was informed of the discovery of X, but not of that of the other property nor of the application for it; that Donald Crawford (2) and Murdoch McLeod (4) proposed to Thomas Crawford (3) that John McLeod (5) should be admitted to a quarter share in X, but he refused, and consequently John McLeod (5) abandoned any interest he might have in X; that agreement (B) terminated on 1st October, 1904, and on 10th October, 1904, Murdoch McLeod (4) abandoned his claim in X, and that thereafter Thomas Crawford (3) applied in his own name for a lease; Murdoch McLeod (4) assisting by swearing an affidavit in support as a disinterested person; that Murdoch McLeod (4) and John McLeod (5) had abandoned all interest in the discovery X, and that the lease was issued to Thomas Crawford (3) absolutely. Then the pleading goes on to say that the sole issue in the actions mentioned was whether Thomas Crawford (3) held an undivided three-fourths in trust for Donald Crawford (2), Murdoch McLeod (4), and John McLeod (5); that prior to bringing the actions Donald Crawford (2), Murdoch McLeod (4), John McLeod (5), and John McMartin (7) had conspired to acquire the three-fourths interest by fraud, on the terms that John McMartin (7) was to finance the action (which he did) and share in the proceeds of the litigation; that Donald Crawford (2) and Murdoch McLeod (4) committed perjury upon the trials; that on 8th June, 1905, Thomas Crawford (3) gave H. E. L. (6) a license to prospect and mine upon X, and afterwards Thomas Crawford (3) agreed with Donald Crawford (2) and Murdoch McLeod (4) to divide equally with them all the profits to arise from this prospecting and mining (F); that this agreement (F) was without consideration and procured by the fraud of Donald Crawford (2) and Murdoch McLeod (4). It is further pleaded that the patent of X is in fee simple absolute to Thomas Crawford (3); that the Ontario Judicature Act . . . does not apply to mining leases, and no fiat of the Attorney-General has been obtained. The Land Titles Act is pleaded, as also the Mines Act and the Statute of Frauds. The prayer is that the

action of plaintiff be dismissed: a declaration that the judgments have no validity; that they be set aside for fraud and want of jurisdiction of the Court; that the agreement of 8th June, 1905 (F), be set aside; that Donald Crawford (2), Murdoch McLeod (4), the administratrix of John McLeod (5), and John McMartin (7), be restrained; that Donald Crawford (2), Murdoch McLeod (4), and John McMartin (7), may pay all loss, costs, and damages occasioned by the actions and the costs of this action; general relief is also prayed.

A motion was made before the Master in Chambers by defendants Donald Crawford (2), Murdoch McLeod (4), and John McMartin (7), for an order setting aside the counterclaim, upon the grounds: (a) that it is irregular; (b) that it can be more conveniently tried in a separate action; and (c) upon other grounds. The Master set the pleading aside. . . .

It seems clear that the position of plaintiff is that Donald Crawford (2) is entitled to a one-third interest in X, and that plaintiff owns one-half of that one-third; it is also clear that whatever interest Donald Crawford (2) has in X, plaintiff claims one-half of that interest. Asking a declaration against Thomas Crawford (3) as to his (plaintiff's) interest in X, it is clear that the question must be tried out between these two as to what the actual interest of Donald Crawford (2) is. Thomas Crawford (3) alleges that Donald Crawford (2) has no interest because he abandoned any interest he might otherwise have had; that must be tried. He alleges that the judgments under which Donald Crawford (2) claims are invalid, having been obtained by fraud and perjury; that must be tried. It is true that plaintiff says that these judgments are bad so far as they give John McLeod (5) a one-fourth interest, but he does not disclaim any advantage he himself (1) may gain by the judgment in favour of his trustee (2). Thomas Crawford (3) alleges that an agreement (F) was obtained by Donald Crawford (2) and another, by fraud, and that Donald Crawford (2) should have no interest in the land through that instrument; that question must be tried.

To put the matter in a few words, plaintiff (1) claims, or may in his pleading claim, a declaration that he is entitled to one-half of one-third or of such smaller share of

X as Donald Crawford (2) is entitled to; and that Donald Crawford (2) is entitled to one-third or some smaller share. In that action, the question whether Donald Crawford (2) owns any and if so what share in X must be tried, and Thomas Crawford (3) should be allowed to set up in some way every fact which shews that Donald Crawford (2) is not entitled to any share or not to such a large share as may be claimed for him. Certain judgments must be got rid of; an agreement is to be got rid of in order to meet the claim of plaintiff made through Donald Crawford (2); and it is right to counterclaim to get rid of these. If a separate action were brought to get rid of these, Thomas Crawford (3) would be well advised to make plaintiff (1) a party—otherwise upon succeeding in the action he would be met by a claim such as is made by plaintiff in this very action in his attack upon John McLeod (5). Plaintiff would say, "I was not a party to that action, though you knew I claimed a one-half interest in what Donald Crawford (2) was nominally entitled to."

I think the Master was wrong so far as this ground of attack goes.

Then as the question of convenience, I think that it is much more convenient to try out the whole matter of the ownership of this location in one action with everybody before the Court, and I think that, were two separate actions brought, I should consolidate them, or at all events order them to be tried together.

The other grounds set up are not based upon matters which can be decided in this summary way. Though some of the relief sought may not be such as can be regularly claimed (as to which I express no opinion), and though some may be inartistically asked, I am clear that the pleading as a whole should not have been struck out.

The appeal will be allowed with costs here and below to defendant Thomas Crawford (3) in any event of the action.

RIDDELL, J. JULY 8TH, 1907.

CHAMBERS.

PLENDERLEITH v. PARSONS.

Costs—Taxation—Copy of Shorthand Evidence Taken in Master's Office—Allowance between Party and Party—Counsel Fees—Subpoena—Letters, Attendances, and other Items.

Appeal by plaintiff and cross-appeal by defendant from the taxation by the senior taxing officer at Toronto of defendant's costs of an action for redemption.

T. Hislop, for plaintiff.

H. E. Irwin, K. C., for defendant.

RIDDELL, J.:—This was an action for redemption, resulting in a judgment for redemption, which involved the taking of the mortgage accounts in the office of the Master in Ordinary. Considerable oral evidence was given, beginning 13th November, 1905, continuing 14th November, 8th December, 5th February, 1906, 7th February, all before the Master in Ordinary, while the evidence of one witness was taken at her house 22nd November, 1905, before Mr. Bastedo, appointed for that purpose by the Master.

In all evidence was taken down in shorthand, which upon being extended fills 193 pages of typewriting. I cannot say that defendant is responsible for any unnecessary or improper evidence. At the close of the sitting of 5th February, Mr. Irwin, counsel for defendant, said: "Might I suggest to your Honour that a day be fixed now with reference to the time when Mr. Bastedo may be able to produce extended notes of the evidence. I think it is absolutely necessary, in view of the importance of some of the points." The Master: "Very good—I will adjourn it until this day fortnight."

No objection was raised to this by counsel for plaintiff; the evidence was ordered, and, according to the usual practice in the Master in Ordinary's office, one copy was furnished for the Master and one for the counsel ordering the copy, a charge of 5 cents per folio being made to cover both.

Defendant inserted in his bill an item: "Attending to pay for notes of evidence, 50 cents, and paid $29.25." This was disallowed by the taxing officer, and defendant appeals.

It was stated before me that the taxing officer rejected the item because he considered that . . . Re Robinson, 16 P. R. 423, prevented him allowing such an item in any case in the Master's office. . . . Re Robinson . . . did not, I think, decide what has been suggested. . . .

Where the evidence is taken in shorthand, it is impossible for any counsel that I know of to take "such notes of the evidence as he may require, as the case proceeds." Crede experto. And this is a fortiori if the evidence deals with a number of small items, and still more so if the evidence has been taken from time to time over an extended period. . . .

No general rule can be deduced from Re Robinson, at least where the evidence is not taken in longhand.

I have examined the proceedings and availed myself of such information as could be furnished me by the stenographer in the office of the Master. From such inquiry I am of opinion that the evidence was properly ordered, and that the costs thereby incurred "were necessary and proper for the attainment of justice and defending the rights of the" defendant.

I see no good reason why such evidence should not be allowed (under the practice in vogue) in the Master's office —as it may be to counsel under other circumstances: see Gage v. Canada Publishing Co., 19 C. L. J. 175, 3 C. L. T. 267, a judgment of Proudfoot, J., after consultation with Boyd, C.

The price seems to be right.

The appeal of defendant will be allowed with costs, which may, at his option, be added to his claim.

Plaintiff also appeals, his appeal covering some 30 items in all.

1. Attended by plaintiff's solicitor on inspection by him of our productions $4.00

Of this $2 was allowed. The objection is based upon . . . Brown v. Sewell, 16 Ch. D. 517. . . . In respect to this decision it is to be observed that there was no tariff item allowing costs for attending on such inspection: see Wilson's Judicature Act, 2nd ed. (1878), pp. 459-462. Nor

in England is there now: McKenzie's Yearly Practice, 1907, pp. 1076 et seq. In the former tariff there is a fee allowed for attendance to inspect or produce for inspection documents referred to in any pleading or affidavit pursuant to notice under Order xxxi, r. 14—our Con. Rule 469 (1): see form 60; Wilson's Judicature Act, 2nd ed., p. 459; Yearly Practice, 1907, p. 1077.

There is no such item as our No. 90, which allows costs for "an inspection of documents when produced under order." The English case, therefore, does not govern; the amount is right when reduced to $2, as it has been by the taxing officer.

2. A matter of discretion, and the discretion rightly exercised, and the same remark applies to 3.

4. Counsel fee advising on evidence. It is argued that such a fee cannot be allowed upon taking accounts in the Master's office. Fees for counsel are allowed for counsel attending on reference to the Master (item 155), and I am unable to understand why, that being so, tariff item 157 does not apply to justify the taxing officer to allow a fee advising on evidence. If I am permitted to appeal to my own experience, I would say that the taking of accounts requires as close a scrutiny of evidence and winnowing out of the immaterial as any part of a counsel's practice.

5. A question of fact decided against the appellant.

6 and 7. Matters of discretion.

8. A charge of $10 for attending on return of motion, reduced by the taxing officer to $2, is justified by item 91.

9. Letter to client to call .....50c. .02c.

It is contended that the client would have had to call in any case, and that the solicitor should have waited for him to come in. I do not think so. Then it is said that the charge should be included in the instructions given when the client did call. I think not, and the quotation from Cameron on Costs, p. 118, does not assist.

10. Attending all day making copies of entries in Howard's books $10.00

Attending completing copy of entries in book in Master's office $10.00

Brown v. Sewell is cited as against this charge, but I am unable to see the relevancy of that case here. This was allowed at so much per folio, and is justified by item 57.

11 and 12. Matters of discretion.

13. It is said that 5 items here are not allowable by the tariff. I need not refer specially to the tariff items, but the objection is baseless.

14. Attended by defendant, going over account and surcharge of plaintiff, considering and advising on (2 hours), $5,00, reduced to $4 by taxing officer, is properly allowed.

15. Feb. 3. Attended by plaintiff's solicitor, going over accounts thoroughly and discussing and making list of such as cannot be agreed upon, and arranged that same be presented to Master and evidence and agreement confined thereto $5.00

16. Feb. 6. Attended by T. Hislop, going over accounts when he admits certain of accounts and initials them $1.00

These, allowed by the taxing officer at $5 in all, are proper charges under item 142.

17. Subpœna. It is argued that once a subpœna has been procured in any action, no second subpœna should be obtained, and Rule 480 is appealed to, to support that contention. Counsel for plaintiff upon the argument stated that it was his practice, after having used a subpœna for one day, to alter it for use in the same action if it be required to subpœna witnesses for a subsequent occasion. I hope that he is singular in that practice. Once a subpœna has been used to bring the witnesses who are required to be sworn at any sittings of the Court, whether at nisi prius or in the Master's office, it is proper, and I think necessary, to procure a new subpœna for the witnesses to be examined upon a subsequent day. I am not now discussing cases in which it is known in advance and before the first sittings that a certain witness will be required at a particular later day—or even at any time in the future. In that case the witness may be subpœnaed before the first sittings and told that he will be needed upon the day certain, or that he will be notified of the day upon which he will be needed. I am not deciding that such a subpœna and notice would be effective, but simply that it would not be improper. But after the first day of the sittings it would be irregular to alter the date in the subpœna, and a witness served with a subpœna on its face for a day then past could not be compelled to obey the subpœna.

This objection is overruled.

18. A matter of discretion and fact.

19. Mar. 13. Attending at Master's office and arranging for case to proceed on Friday 23rd inst. $1.00

Allowed by taxing officer at 50 cents, and not further objected to. I insert it to explain the following, which is objected to as "not taxable"—"Attended by client and advising ....50c."

See tariff item 106, and in lieu of a letter.

20. Discretion and depending upon facts.

21. Attending to leave authorities with Master ....50c.

Tariff item 106. It is argued that this is included in the counsel fee, but I think not. It is not usual for counsel to perform this service, and the office boy must be made to earn his salary.

22. Received letter from Mr. Hislop with agreement and affidavit filed with Master, perusing and considering . . .$2.

Allowed at $1, and properly so by tariff item 89. It was argued by Mr. Hislop that it was not much of an affidavit, and did not need perusal. I cannot think, however, that any solicitor would be justified, upon receiving an affidavit by and from the solicitor on the opposite side, in saying, "Oh, well, this is another of that man's affidavits; I shall just toss it into the waste paper basket." It might indeed turn out that that might be the proper destination for it, but it would scarcely be considered safe for any solicitor to take that for granted.

23. Letter to Master with objection to reception of evidence in affidavit filed by plaintiff . . . $1.00.

Allowed by taxing officer at 50 cents.

Letter to Mr. Hislop with copy of letter to Master . . . $1.00.

Allowed by taxing officer at 50 cents.

Said to be useless and unnecessary. I do not so find.

24. Perusing accounts, considering and taking instructions for supplementary accounts . . . $5.00.

Allowed by taxing officer at $2. Covered by item 38.

25. Perusing accounts and finally settled and preparing new mortgage account . . . $5.00.

Allowed by taxing officer at $1—not too much, I think.

26. No counsel fees, it is argued, should have been allowed on the reference, as it is said no important point or matter was involved. I am unable to agree. I think that

the taxing officer rightly exercised the discretion given him by the Rules, and that the provisions of tariff items 155 and 156 were rightly applied.

On all the points taken, this appeal fails, and it will be dismissed with costs; these costs defendant may, if so advised, add to the mortgage claim.

I lay down my pen with some regret; it is such motions as these which relieve the dull monotony of life in the dog days.

Since the above was written, I have had the advantage of a conference with my Lord the only surviving Judge of those who constituted the Court which decided Re Robinson; and I am by him authorized to say that I have correctly interpreted that case, and that the Court never intended to lay down the rule that copies of depositions in the Master's office could in no case be allowed on taxation between party and party or otherwise.