

MASON, J.,
in Chambers,
4th April, 1911.

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WALSH vs. SHEELEY.

Practice.—Intervention.—Patent Proceedings.—Costs.—Mandamus against Taxing Master.—Act 28 of 1907.

Where a party had obtained an order for costs against another in proceedings instituted under Act 28 of 1907, in objection to the grant of a patent and the Taxing Master had refused to tax such costs:—Held, that, in an application of mandamus by such party against the Taxing Master, the party against whom the order for costs had been granted was entitled to intervene.

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Application for leave to intervene as respondent in the case of *Sheeley vs. the Registrar and Taxing Master of the Supreme Court.*

On January 10th last Sheeley objected to a certain patent being granted to Walsh, and the objection was sustained, Walsh being ordered to pay the costs. When the bill of costs came before the Taxing Master for taxation, the patent agents who represented Sheeley, proposed to have the bill of costs taxed against Walsh in the same way as if they had been attorneys. The Taxing Master, however, declined to tax the bill, and thereupon Sheeley moved for an Order directing the Taxing Master to proceed with the taxation. Walsh sought to intervene with the application as co-respondent with the Taxing Master.

N. J. de Wet, for the applicant, moved.

G. Hartog, for the respondent: There is an order against respondent to pay the costs of the application of the 10th of January, and it can make no difference to him by whom the costs are taxed.

[MASON, J.: Is he not interested in whether the Taxing Master taxes on the attorney's scale or on a basis of what would be a reasonable remuneration?]

No, because the attorney's scale is a reasonable remuneration. The question of the taxing machine cannot concern Walsh.

N. J. de Wet was not called on to reply.

MASON, J. : It appears to me that Walsh is substantially a party to the proceedings, and I am not sure that notice ought not to have been given to him in the first instance. Sheeley objected to a patent being granted to Walsh. Proceedings took place under the Act of 1907, before a Judge of the Court, and the objection was upheld with costs against Walsh. The patent agents who represented Sheeley proposed to have the bill of costs taxed in the same way as if they had been attorneys in the proceedings before the Judge. The Taxing Officer declined to tax, because he said he had no authority to do so and did not know upon what scale he was to tax. Thereupon Sheeley moved for a mandamus to direct the Taxing Officer to tax the bill, giving notice only to the Taxing Officer and not to Walsh. Walsh applies for leave to intervene. It appears to me that he has such a direct interest in the matter that that application ought to be granted, because it seems to me impossible to differentiate between the position of the Taxing Officer as taxing bills on the Supreme Court scale and the position of a person who has to determine what is fair remuneration. The Taxing Officer, if he is directed to tax, is practically directed to tax on a particular scale, and, therefore, a decision directing him to tax may necessarily determine on what scale costs are to be awarded to Sheeley. It appears to me Walsh is vitally interested in that matter. It is quite true that the patent agents may be entitled to reasonable remuneration, but whether that reasonable remuneration is to be fixed by evidence, as in the ordinary case, when persons not in the position of attorneys sue for reasonable remuneration, or whether it is to be determined by the scale which the Court has laid down, is a question which may very vitally interest Walsh. It appears to me, therefore, that he has such a direct interest in the matter that the Court ought to allow him to intervene as respondent in the application.

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[Applicant's Attorneys, MACKINTOSH and KENNERLY.]
[Respondent's Attorneys, WAGNER and KLAGSBRUN.]

[Reported by ADOLF DAVIS, Esq., Advocate.]