H. C. OF A. 1913.

MUNRO v. COONAMBLE PASTURES PROTECTION BOARD.

section and confer any title it pleases, whether rabbit inspector or otherwise. But that would not support the appellant's claim against the board, as put forward in this action, and so it must fail.

GAVAN DUFFY J. I concur.

Appeal dismissed with costs.

Solicitor, for the appellant, *F. S. Hegarty*, Coonamble, by *Mackenzie & Mackenzie.*

Solicitors, for the respondents, *McGuinn & McGuinn*, Dubbo, by *L. G. B. Cadden.*

B. L.

[HIGH COURT OF AUSTRALIA.]

NORTON . . . . . APPELLANT;
DEFENDANT,

AND

HERALD . . . . . RESPONDENT.
PLAINTIFF,

H. C. OF A. 1913.

SYDNEY, *Dec.* 10, 11.

Isaacs, Powers and Rich JJ.

Practice (High Court)—Costs—Taxation—Action instituted in one Registry—Costs of attendance of solicitor on proceedings in another Registry.

An action was brought in the New South Wales Registry of the High Court by a Melbourne solicitor, who had acted for a client in a libel action in the Supreme Court of Victoria, to recover from the client, who was a resident of Sydney, the amount of his bill of costs in respect of that action, and an order was made for the taxation of those costs. The bill of costs was taxed in Melbourne, and such an amount was taxed off it that the client became entitled to the costs of taxation. On the taxation of the last mentioned costs a certain sum was claimed as being the travelling expenses of the client's

Sydney solicitor to Melbourne to attend the taxation of the original bill of costs and his expenses of residence while there. This sum the Deputy Registrar disallowed, and allowed in lieu thereof a sum which he thought sufficient to cover the cost of employing a Melbourne solicitor as agent on the taxation, being of opinion that the attendance of the Sydney solicitor in Melbourne was not reasonably necessary in the circumstances.

Held, affirming the decision of *Barton* A.C.J., that the Deputy Registrar had acted on the right principle, and that there was nothing to show that the amount allowed by him was insufficient.

APPEAL from *Barton* A.C.J.

An action was brought in the Sydney Registry of the High Court by David Houston Herald, a solicitor practising in Melbourne, against John Norton, a resident of Sydney, to recover the amount of a bill of costs for professional services rendered by Herald to Norton in a libel action which had been brought in the Supreme Court of Victoria against Norton. In the costs action, on the application of the plaintiff, an order was made directing taxation of Herald's bill of costs, and referring the taxation to the proper officer of the High Court at Melbourne. On taxation more than one-sixth was taxed off the bill, and the defendant thereupon became entitled to the costs of the taxation. On 9th May 1913, on the application of the plaintiff, an order was made by *Barton* A.C.J., that the plaintiff should have liberty to sign final judgment for £455 9s. 11d., less such sum as the Deputy Registrar at Melbourne might assess as the defendant's costs of taxation of the bill of costs. On the assessment the defendant claimed £547 6s. 4d., and the Deputy Registrar allowed £18 7s., and on objections to such assessment being brought in by the defendant, the Deputy Registrar adhered to the amount allowed by him and stated his reasons as follows :—

"In the amount so allowed by me is an item of £5 5s. for attendances of defendant's solicitor on defendant taking instructions for taxation. This is altogether distinct and apart from his general instructions to defend the action. There is also an item of £2 2s. for a further and more specific perusal of the bill of costs for the purpose of taxation. The defendant's solicitor has stated by an affidavit sworn on the 5th March last and filed herein that he had then perused the bill of costs, and such latter perusal would be in his general costs of the action. There is also a

H. C. OF A. 1913.

NORTON v. HERALD.

further item allowed of £2 2s. for a long and special letter which he could have written to his Melbourne agents.

"The original action out of which this present action arose was a Victorian one, and the costs the subject matter of this action were drawn on the Victorian scale.

"Under all the circumstances of this case I am of opinion that the personal attendance of the defendant's solicitor from Sydney was unnecessary on this taxation."

The defendant thereupon took out a summons to review taxation, which came on for hearing before *Barton* A.C.J. On the hearing of the summons the Deputy Registrar said, in answer to the learned Judge, that the taxation of the plaintiff's bill was upon the Victorian scale, and that he had considered that a solicitor from another State would probably not be so conversant with that scale as a Victorian solicitor, but that in considering whether the costs of employing the defendant's solicitor from Sydney upon the taxation should be allowed, he had given no consideration to the limits of the different Registries, but had dealt with the question only in relation to the reasonableness of such a step in the particular instance.

Barton A.C.J. having dismissed the summons, the defendant now appealed to the Full Court.

Blacket K.C. (with him *Noble*), for the appellant. In a case where an action is instituted in Sydney, but by the act of one of the parties some of the proceedings are transferred to another State, the costs of the attendance of the other party's solicitor in that other State should be allowed. The step of taking the appellant's solicitor to Melbourne was a reasonable one, and the costs of having him there should be allowed: *Western Australian Bank* v. *Royal Insurance Co.* (1). The taxing officer has dealt with the matter in the same way as if it had been a Supreme Court action, and the question had been one of bringing a country solicitor to town: See *The Soto.* (2).

[RICH J. referred to *In re Dixon*; *Tousey* v. *Sheffield* (3).]

The Court should consider all the circumstances in order to say

(1) 7 C.L.R., 385.

(2) (1893) P., 73, at p. 74.

(3) (1898) 2 Ch., 443, at p. 447.

whether a proper discretion has been exercised on right principles: *Kroehn* v. *Kroehn* (1).

[RICH J. If the matter is within the discretion of the Registrar it is not for us to consider whether he has exercised it rightly or wrongly: *McIver & Co. Ltd.* v. *Tate Steamers Ltd.* (2).]

It was not for the Registrar to consider how the matter could have been most cheaply done, but he should have inquired whether taking the solicitor to Melbourne was a thing which a reasonably prudent man would have done.

Bavin (*Brissenden* with him), for the respondent. Accepting the guiding principle to be, what would a reasonably prudent man have done, the Registrar applied that rule; and there is no suggestion that he applied any other suggestion. The other side can only succeed if it is held to be the right of every party to be represented in every part of the Commonwealth by his own solicitor whenever an application in the particular action is made in that other part. Assuming that the proper principle has been followed, this Court will not go into the question of amount.

Blacket K.C., in reply.

Cur. adv. vult.

The judgment of the Court was read by

Dec. 11.

ISAACS J. This is an appeal from an order of *Barton* A.C.J. of 27th June 1913, by which he dismissed the appellant's summons to review the disallowance by the Deputy Registrar of certain items of defendant's costs.

An action had been brought in the Sydney Registry by the present respondent against the appellant to recover the amount of a bill of costs for professional services as solicitor in a libel action which had been brought against the appellant. In the costs action an order had been made to tax the bill of costs. On taxation more than one-sixth had been taxed off, which entitled the defendant—the appellant now—to his costs of the taxation. It is in respect of some of the items of those costs that the present appeal is brought. Those costs, as claimed, included travelling

(1) 15 C.L.R., 137, at p. 145. (2) (1902) 2 K.B., 184, at p. 189.

H. C. OF A. 1913.

NORTON v. HERALD.

expenses of Mr. Moss, a Sydney solicitor to Melbourne, and his residential expenses while there. These the Deputy Registrar disallowed, substituting for them two sums of £2 2s. each, one for a special letter of instructions, which the Deputy Registrar said could have been written to a Melbourne solicitor, conveying all necessary information; and the other, as we think, as remuneration to the assumed Melbourne solicitor for perusing and making himself acquainted with the contents of the letter and the bill of costs. Besides these, the sum of £5 5s. was allowed to Mr. Moss for instructions in connection with the bill of costs, so as to qualify himself to give the necessary instructions. And certain other allowances were made for actual attendances at taxation, the total amount allowed being £18 7s. Mr. *Blacket*, who argued the case with all the force possible in the circumstances, urged that as the action was brought in the Sydney Registry, it was only reasonable to instruct Mr. Moss there, and that being so, it was only what a prudent man would do in the circumstances, to take him to Melbourne, or else for Mr. Norton to go personally to Melbourne to instruct a solicitor there, because much might depend on the personal knowledge of the client. And, said Mr. *Blacket*, the taxing master erred in treating this as if it were a case of town and country, instead of independent registries.

As to the last point, it is not founded in fact, because the Deputy Registrar distinctly said to *Barton* A.C.J. on the chamber application that he had considered what was reasonable in the circumstances of this particular case.

The burden then lies upon the appellant to show that the order made by *Barton* A.C.J. was wrong in not regarding the Deputy Registrar's decision as incorrect in principle, or so unreasonable on the facts as to be manifestly unjust. The rule as to interfering with discretion is laid down in *Kroehn* v. *Kroehn* (1), based on English authorities, to which may be added the case of *In the Estate of Ogilvie*; *Ogilvie* v. *Massey* (2), cited by my brother *Rich*. Now, there is nothing to show either. There is nothing established to show the reasonable necessity for the presence of either Mr. Moss or Mr. Norton in Melbourne, or that as

(1) 15 C.L.R., 137, at p. 146. (2) (1910) P., 243.

a matter of prudence either should have been there on the taxation. The writ was issued on 11th February, appearance entered on 18th February, and summons for final judgment on 28th February. All that remained was taxation of the bill, and Mr. Moss had no previous knowledge of the circumstances, so that any other solicitor would have been as competent for the work.

Looking at the reasons stated in the appellant's objections to the taxing master, it is clear that Mr. Norton's personal knowledge of the relevant circumstances was not considered material. It is not even referred to, though personal information from others is plainly indicated.

In these circumstances, the case resolves itself into a mere question of sufficiency of amount. As to this, we are not in a position to say the Deputy Registrar was wrong. We have no materials, and no personal knowledge of the circumstances. In a case of this kind, the appellant must, in order to induce the Court to act, make out his case very clearly, otherwise we should find our time occupied with mere re-hearings as to *quantum* of costs, to the disadvantage of suitors asking for the determination of questions more properly within the intended functions of this tribunal.

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitor, for the appellant, *H. A. Moss.*

Solicitors, for the respondent, *Baxter, Bruce & Ebsworth.*

B. L.