

THE TORONTO ADMIRALTY DISTRICT.

JOHN M. TUCKERPLAINTIFF ;

1906
Mar. 8.

AGAINST

THE SHIP *TECUMSEH*.

*Practice—Interlocutory motion—Costs reserved to be disposed of at trial—
Not considered at trial—Jurisdiction of trial court after appeal
taken.*

Where on an interlocutory motion costs are reserved to be disposed of at the trial, and the trial is had without any reference to these costs, if an appeal from such judgment be taken and the judgment affirmed, the jurisdiction of the appellate court attaches, and the trial court on the further application has no power to render any further decision unless remanded, and even then the court will deal with such application only under special circumstances.

MOTION in Chambers at Sandwich on 24th January, 1906, by the plaintiff to be allowed costs of an interlocutory motion.

J. H. Rodd for the plaintiff.

J. W. Hanna for the defendant.

HODGINS, L.J., now (March 8th, 1906) delivered judgment.

After my judgment in this case had been appealed to the Exchequer Court of Canada and decided in favour of the plaintiff, the plaintiff makes an application to be allowed the costs of an interlocutory Chamber motion heard on the 15th October last—the costs of which were reserved to be disposed of at the trial of the cause, but which costs were not then brought up for consideration, or disposed of.

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 ———
**Reasons for
 Judgment.**
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In the *Encyclopædia of Pleading and Practice* (1) it is stated "Where an appeal has been perfected, the jurisdiction of the appellate court over the subject-matter and the parties, attaches, and the trial court has no power to render any further decision affecting the rights of the parties in the cause, until it is remanded." The appellate court in this case has affirmed the judgment of the trial court, and there is therefore no remand back.

And in *British Natural Premium Provident Association v. Bywater* (2). Byrne, J., while he allowed certain reserved costs of interlocutory motions, there having been no appeal, said : "Where interlocutory applications have been disposed of, but the costs have been reserved, such costs are not to be mentioned in the judgment or order, or allowed on taxation without the special directions of the judge. So far as I am personally concerned I shall in future deal with great jealousy with such applications, and shall not after judgment has been passed and entered allow costs reserved and not mentioned at the trial—except under very special circumstances."

On either of the above grounds I think there should be no order on this application.

Motion dismissed.

(1) Vol. 2, p. 327.

(2) [1897] 2 Ch. D. 531, at p. 532.