

In the Matter of Poulton's Patent.

IN THE HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

Before MR. JUSTICE BUCKLEY.

August 3rd, 1906.

IN THE MATTER OF POULTON'S PATENT.

5 *Patent.—Petition for revocation.—Taxation of Petitioner's costs.—Costs of obtaining the authority of Attorney-General.*

A Petition for revocation of a Patent having been presented with the authority of the Attorney-General, the Patent was revoked, the Respondent being ordered to pay the costs of the Petitioner. On the taxation the Respondent objected that
 10 *the Petitioner was not entitled to the costs of obtaining the authority of the Attorney-General. The Taxing Master allowed such costs. The Respondent applied to review the taxation.*

Held, that the costs of obtaining the authority of the Attorney-General were properly allowed. The Summons was dismissed with costs.

15 This was the hearing of a Summons to review taxation in the above-mentioned matter. The Petitioner for revocation of the Patent presented his Petition in December 1905, having previously obtained the authority of the Attorney-General so to do, as required by Section 26 of the Patents, &c. Act, 1883. The Patent was on the hearing of the Petition held to be invalid, and an Order for
 20 revocation was made, subject to a stay on terms, and the Respondent was ordered to pay the Petitioner's costs (*ante*, page 183). On appeal this decision was affirmed (*ante*, page 506). The Respondent on the taxation of costs took objection to the allowance of the costs of obtaining the authority of the Attorney-General, but the objection was overruled by the Taxing Master. The
 25 Respondent then applied by Summons to review the taxation.

T. Terrell K.C. and *L. B. Sebastian* (instructed by *J. Bartlett*) appeared for the Respondent; *A. J. Walter* (instructed by *Soames, Edwards, and Jones*) appeared for the Petitioner.

30 *BUCKLEY J.*—I confess I should have thought this point was beyond argument. The Petitioner presented a Petition for revocation. Before presenting

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it of course he had, under Section 26 of the Patent Act of 1883, to get the Attorney-General's fiat, and he got that fiat. The Petition for revocation was allowed, with the result that there was judgment for the Petitioner with costs. The whole question that was argued before me is as to whether he is entitled to his costs of obtaining the Attorney-General's fiat. Since the Court of Chancery was invented the question must have arisen over and over again upon Information, or Information and Bill, whether the costs of obtaining the Attorney-General's fiat should be included when the Petitioner gets his costs. I have had the advantage of seeing one of the Taxing Masters, who tells me that he has never heard it doubted; that in taxing such a bill the day before yesterday he allowed them. What is the difference between that case and this? None. Mr. Terrell has sought to advance the argument that you cannot get any costs before the Petition is presented or the writ is issued. Obviously that cannot stand examination for a moment, because before you issue your writ, you have got to draw and settle it, and you get the costs of that. You are always allowed the instructions for a writ, and matters which come before. The question is whether the costs are costs of and incidental to the proceedings. The costs antecedent to the issue of the writ or presentation of the Petition may be such, but the costs of obtaining the Attorney-General's fiat are necessarily so under circumstances such as these. What the Master has said is this: "The Petition could not be presented without the Attorney-General's fiat and the Order gave the Petitioner his costs of the Petition. I have allowed the costs objected to, as they appear to me to have been necessarily incurred for the attainment of justice, and under the circumstances appearing the costs as allowed are fair and proper." I think the Taxing Master was right, and I dismiss the Summons with costs.