

the expense of the construction and maintenance of suburban roads leading into London. The action was tried without a jury at London. FALCONBRIDGE, C.J.K.B., in a written judgment, said that the points involved in this case had been discussed in elaborate written arguments. He agreed with the defendants' contentions, both as to the law and as to findings or inferences of fact. The action should be dismissed with costs. G. S. Gibbons and J. C. Elliott, for the plaintiffs. T. G. Meredith, K.C., for the defendants.

MULLEN COAL CO. v. PULLING AND McKEE—LENNOX, J.—
DEC. 22.

Contract—Breach—Damages—Payment out of Trust Fund—Costs of Trustees—Disposition of Remainder of Fund—Reference—Payment into Court.—Action to recover \$20,000 placed in the defendants' hands on the 3rd May, 1917, with interest from that date. The money was paid by the plaintiff company to the defendants as trustees under the terms of a written agreement. The action was tried without a jury at Sandwich. LENNOX, J., in a written judgment, said, after stating the facts and considering the evidence before him, that the defendants, as trustees for certain plaintiffs in an action of Taylor v. Mullen Coal Co., should have judgment for \$1,480, payable out of the trust fund, as damages sustained by these cestuis que trust by reason of the plaintiff company's neglect and refusal to abide by and carry out its agreements of the 4th May, 1916, and the 3rd May, 1917. The defendants personally should have judgment against the plaintiff company for their costs of defending this action, to be taxed as between solicitor and client, the taxed costs to be payable out of the trust fund and retained by the defendants. There should be judgment for the plaintiff company against the defendants, without costs, for the balance of the \$20,000, together with the interest earned thereon, computed from the 31st May, 1917, until judgment, after deducting from the total of principal and interest the \$1,480 and the defendants' taxed costs as aforesaid. Either party may have a reference to fix the damages if either is not content with the assessment at \$1,480. That sum is to be paid into Court, and will remain there until the issues as to damages are finally determined, and will be applied and paid out according to the event. This judgment is without prejudice to the rights, if any, of such of the plaintiffs in the former action as are not represented by the defendants in this action. A. R. Bartlet, for the plaintiff company. T. Mercer Morton, for the defendants.