

court. On the trial Wright, J., referred it to the Master to tax the bill, and take the cash account from 1893, and the plaintiff was required to give credit for all sums received on account of defendant. On the reference the defendant sought to charge the plaintiff with £66 odd received in 1894 by the deceased, and it was then claimed by the plaintiff that he was entitled to apply this sum on the statute barred items of the bill of costs. Wright, J., allowed the set off as to part of the amount, but the Court of Appeal (Collins, M.R., and Stirling, and Mathew, L.JJ.) held that no part of the statute barred claim could be so set off: in so doing they adopt the dictum of Wilde, C.J., in *Francis v. Dodsworth* (1847) 4 C.B. 202, at p. 220, "No debts can be used by way of set off . . . except such as are recoverable by action." And as regards the plaintiff's claim to appropriate the payment to the statute barred part of his claim, they held that he had not in fact done so before action, as in no account rendered had the £66 item appeared, and that after action it was too late for the creditor to appropriate.

NEGLIGENCE — INTERVENING ACT OF TRESPASSER—EFFECTIVE COURSE OF DAMAGE.

In *McDowall v. Great Western Ry.* (1903) 2 K.B. 331, we find that the Court of Appeal (Williams, Romer, and Stirling, L.JJ.) have been able to reverse the decision of Kennedy J. (1902) 1 K.B. 618 (noted ante, vol. 485). This was the case in which the defendants' servants had left some railway cars on a siding in a condition in which no damage would have been occasioned if they had been left alone. Some boys trespassing on the siding mischievously released the brakes, causing the cars to run down an incline and thereby caused damage to the plaintiff's vehicle. The jury found that the defendants' servants knew that boys were in the habit of trespassing on the siding and took no steps to prevent it, and that the defendants were therefore guilty of negligence, and on this finding Kennedy, J., gave judgment for the plaintiff. The Court of Appeal, however, held that there was no evidence on which the jury could properly find the defendants guilty of negligence and they therefore dismissed the action.