

On this motion it was submitted that these cases laid down a rule not in conflict with our own cases, which might be adopted without impinging upon them. It was said that, conceding the correctness of the doctrine that inasmuch as the salary covered all claims of the solicitor against the clients for the costs of conducting the defences, the clients incurred no liability against which they were entitled to be indemnified, it had no application where, as in this case, it was a term of the employment that the costs awarded to the corporation should be received by the city treasurer for its benefit. It was further submitted that if it appeared that *Jarvis v. Great Western R. W. Co.* and *Stevenson v. City of Kingston* applied, they should be reconsidered in the light of the English cases; and that in any case the question of the effect of the amendment to the by-law was of sufficient importance to justify further discussion in this Court.

*Jarvis v. Great Western R. W. Co.* was decided over 40 years ago. It was fully considered in *Stevenson v. City of Kingston* over 20 years ago, and was then affirmed, though the opinion of Sir A. Wilson, C.J., was opposed to it. At the next session of the Legislature held after the rendering of the latter decision, the Municipal Act was amended (44 Vict. ch. 24, sec. 5) so as to enable a municipal corporation to collect costs of suits and proceedings, notwithstanding the employment of the solicitor at a salary, when by the terms of the employment such costs are payable to the solicitor as part of his remuneration in addition to his salary. From that time to the present it has been within the power of the defendants in this action to do as they have lately done, viz., make it a term of the employment of their solicitor that costs payable to them by other parties should be received by the solicitor as part of his remuneration in addition to his salary.

Without saying that a case could not yet arise in which it might be proper to review these cases, I think that, having regard to the legislation, and to the prior decisions and the clear recognition of their authority in subsequent cases, I ought not to give leave to open a discussion of them with a view to the adoption of the rule of the English cases, at the instance of a municipal corporation. The amount involved is not large, and the defendants have provided for all future cases. I am inclined to agree with the Divisional Court that the date of the judgment governs the plaintiffs' liability to the defendants for costs, but I express no decided opinion. I only say that I think no sufficient reasons have been shewn for treating the case as exceptional and allowing a further appeal.

The motion must be dismissed.