

Held, also, that as no demand was made, although the plaintiff was entitled to judgment of *scisin*, it should be without costs, and as defendants were always ready and willing to assign the dower, plaintiff was not entitled to damages for detention.

Anglin, for the plaintiff.

Kappelle, for the defendants.

FERGUSON, J.] [Feb. 4.
Re ST. PHILLIP'S CHURCH AND THE GLAS-
GOW & LONDON INSURANCE CO.

*Insurance—Policy effected before R.S.O., 1887—
Appraisal—Arbitration—Costs—R.S.O.,
1877, c. 162; R.S.O., 1887, c. 167, s. 114.*

St. Phillip's Church was insured with the Glasgow & London Insurance Co. under a three years' policy on November 14, 1885, and was destroyed by fire May 31st, 1888. The company admitted the loss, but asked the wardens to prove the damage, and an agreement for submission to appraisers was entered into by the wardens and the company, in which it was provided that "the award made by them (the appraisers), or any two of them, shall be binding upon both of said parties as to the amount of such damage to said insured property, but shall not determine any question touching the legal liability of said company," etc. Two of the appraisers joined in an award giving the wardens the full amount mentioned in the policy, and ordered the company to pay the costs of the reference and award. The company refused to pay any costs over and above half the arbitrators' fees.

Held [affirming the Master in Chambers], that R.S.O., 1887, c. 167, s. 114, was applicable to the policy in question, and that the Legislature intended by the use of the words "or otherwise in force in Ontario with respect to any property therein," that section to be applicable to all policies existing at the time the Act came into force, and that costs were properly awarded under sub-sec. 16 of that section.

Lockhart Gordon, for the churchwardens.

Geo. M. Rae, for the insurance company.

Div'l Ct.] [March 5.

MACDONELL v. BLAKE, et al.

*Law Society—Retired judge—Ex officio bench—
R.S.O., 1877, c. 138, s. 4.*

One who has been appointed a judge of one of the Superior Courts of Ontario, and has resigned before serving out fifteen years, and not being afflicted with some permanent infirmity disabling him from the due execution of his office, and resumed the active practice of his profession as a lawyer, is a retired judge within the meaning of R.S.O., 1877, c. 138, s. 4, so as to entitle him to act as an *ex officio* bench of the Law Society.

James Reeve, for plaintiff.

Lount, Q.C., and Reeve, Q.C., for the Law Society.

H. Cassels, for defendant Blake.

Practice.

GALT, C.J.]

March 27.

MACDONALD v. ANDERSON.

Receiver—Equitable execution—Rents—Restraint on anticipation.

Motion by the plaintiff for the appointment of a receiver to receive the rents of certain property held in trust for the defendant, a married woman, and the judgment debtor of the plaintiff. The property in question was vested in trustees to be held by them upon trust, at the request of the defendant, during her life: and afterwards, at their discretion, to sell the premises and to hold the moneys to arise from such sale upon trust to pay the income to the defendant during her life for her separate use independently of her present or any future husband, "and her receipts alone shall be sufficient discharges, and she shall not have power to deprive herself of any of the said principal money or of the income thereof by anticipation."

GALT, C.J.—It appears to me this case is concluded by the case of *Chapman v. Biggs*, 11 Q.B.D. 27. It is true, as argued by Mr. Shepley, that this application is for a receiver of the rents of the house, and that the house has not been sold; but if effect was given to such an argument the result might produce a serious loss and inconvenience to the defendant without in any degree benefiting the