

Ex. Ct.]

LAW SOCIETY—NOTES OF CASES.

[C. P.]

The Special Committee on prizes to County Legal and Literary Societies was re-appointed, and Mr. Osler's name added thereto.

Mr. Irving moved, pursuant to notice, the rescission of the resolution relating to the portrait of Chief Justice Osgoode.—Lost.

Convocation adjourned.

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

EXCHEQUER COURT OF CANADA.

Fournier, J.]

[January 12.

DOUTRE, *Suppliant*, AND THE QUEEN,
Defendant.

Treaty of Washington—Employment and remuneration of Canadian Counsel—Right of Counsel to recover by Petition of Right—35 Vic., c. 25.

Under article 25 of the Treaty of Washington it is provided "that each of the high contracting parties shall pay its own commissioner and agent or counsel, all other expenses shall be defrayed by the two Governments in equal moieties."

By 35 Vic., c. 25, D., the fisheries articles of the treaty of Washington were made part of the law of Canada, and under the authority of that treaty and that statute the Government of Canada engaged and retained the services of the suppliant, a Queen's Counsel, residing in the city of Montreal, as one of the Canadian counsel before the Commission sitting at Halifax. There was evidence showing that the agreement entered into between the Minister of Marine and Fisheries and the suppliant at Ottawa, was to the following effect:—That the suppliant was to receive \$1000 on account of his expenses and his services per month whilst the Commission was sitting at Halifax, and that a further sum, to be settled after the award of the Commissioners, would be paid. The suppliant removed with his family from Montreal to Halifax, and was exclusively engaged in connection

with this matter for two hundred and forty days. The Government paid suppliant \$8,000 and by his petition the suppliant claimed that the amount received only paid his expenses, and that he was entitled to a further sum of \$10,000 for the value of his services. The amount involved before the Commission was \$12,000,000, and the amount awarded in favor of Canada was \$5,500,000.

Held: 1. That this agreement constituted a valid contract, and that the suppliant was entitled to recover, by petition of right, the amount due him under said agreement.

2. That the agreement entered into having been made at the city of Ottawa, the rules of evidence in force in the Province of Ontario were applicable, and the suppliant's evidence on his own behalf was, therefore, admissible.

3. That as the evidence adduced proved that the remuneration received by the suppliant, when engaged as counsel in important cases, was \$50 per diem, with an additional sum of \$20 per day for expenses, when his services were required outside of his own province, the Court would grant him \$8,000 out of the \$10,000 claimed by his petition, being at the rate of \$50 per diem, and \$20 for expenses for the 240 days he was employed before the Commission.

Haliburton, Q. C., and Ferguson, for suppliant.

Lash, Q. C., and Hogg, for defendant.

COMMON PLEAS.

VACATION COURT—JAN. 14.

BUCKELL *et al.* v. MCGUIRE *et al.*

Partnership—Dissolution of—Payments by continuing partner—Appropriation—Giving of time—Discharge.

When a partnership has been dissolved, and one of the partners continues to deal with a creditor of the firm, and in such dealing the partnership and separate accounts are blended and mixed together, the payments made by the continuing partner, though without any express appropriation, must be applied to the partnership indebtedness.