made with the partnership. The partnership was formed for carrying on a music hall under the name of the Alhambra Co. The plaintiffs were a troupe of performers, who entered into a contract with the company to give certain performances at the company's music hall. The plaintiffs had no knowledge of how the company was composed. After the making of the contract and before the time for its performance arrived, one of the partners died, and the defendants contended that his death put an end to the contract. The action was brought against the surviving partners and the executors of the deceased partner, to recover the amount payable under the contract, the partnership having been dissolved and the music hall sold by mortgagees under power of sale. Judgment was given at the trial in favour of the plaintiffs against the surviving partners, but dismissing the action against the executors of the deceased partner. On appeal by the other defendants to the Divisional Court (Lord Alverstone, C.J., and Kennedy, J.), the judgment was affirmed. The sale by the mortgagees was held to be no excuse for non performance by the defendants, and the death of one of the partners was also held not to put an end to the contract, because it was not one which depended upon the personal conduct of the deceased partner.

PRACTICE—COSTS, SCALE OF—ACTION "WHICH SHOULD HAVE BEEN COMMENCED IN A COUNTY COURT"—(ONT. RULE 1132).

In *Solomon* v. *Mulliner & The M.C.S. Co.* (1900) 1 Q.B. 76, a short point of practice is determined. The plaintiffs had commenced an action of tort in the High Court, claiming damages £100; they ultimately accepted £2 paid into court in satisfaction. They claimed costs on the High Court scale, but the Taxing Officer, affirmed by Day, J., held they were only entitled to County Court costs, and this decision was affirmed by the Court of Appeal (Smith, M.R., and Collins, L.J.), on the ground that, judged by the result, the action was one which "should have been commenced in the County Court," notwithstanding that the plaintiffs had claimed a sum beyond the jurisdiction of that court. The same reasoning would seem to apply to the construction of the Ont. Rules, but for *Babcock* v. *Standish*, 19 P.R. 195, where it was held that Ont. Rule 1132 does not apply where the plaintiff accepts money out of court in satisfaction of his claim, even though the amount accepted be within the jurisdiction of an inferior court.