one debenture . . . for the sum of $2,000 be issued . . . payable in 30 years from the 1st . . . December, 1907, with interest at the rate of 5 per cent. per annum payable as hereinbefore stated." The words "as hereinbefore stated" referred not to the amount of principal or interest to be paid, but to the special place designated for payment, on presentation of the coupons "at the office of the Treasurer of the Township of Albemarle." The debenture issued provided for payment of $2,000 at the Treasurer's office, by annual instalments of $118.33⅓, "which includes principal and *interest averaged* at 5 per cent. per annum so that the whole amount of principal and interest will be paid at the expiration of 30 years;" and attached to the debentures were 30 coupons for $118.33⅓ each.

The plaintiffs alleged mutual mistake of fact; that the annual payments should have been $130.10; and that the deficiency at the time the action was begun amounted to $390.63.

The learned Judge said that the council acted in good faith and intended to provide for the payment of interest at 5 per cent. By "interest averaged" the draftsman meant interest on the average of principal money. The annual payment should have been $130.10, as contended by the plaintiffs. There was nothing to justify a claim for compound interest, and no claim was set up.

The Limitations Act did not apply.

There was mutual error and a right to reformation. As a matter of construction, a contract was expressed in both the by-law and debenture for payment of interest at 5 per cent. on the actual amounts of principal money from year to year unpaid. "Interest averaged" was meaningless surplusage and to be rejected.

There should be judgment for the plaintiffs with costs; the precise form of the judgment will be settled hereafter.

There was a motion for judgment, the costs of which were left to be disposed of by the trial Judge. No costs of that motion should be allowed.

CONGRAM v. GRIFFIN—LENNOX, J.—MAY 9.

Assault—Provocation—Evidence—Damages.]—The plaintiff and defendant lived upon adjoining farms. The action was for damages for assault. It was tried at Walkerton without a jury. LENNOX, J., in a written judgment, said that there was very great disparity between the two accounts of the affair as given by the parties. They were respectable men; and, if the action had to be determined on the evidence of the parties to the action alone, there would be difficulty in deciding which story ought to