On appeal to the Divisional Court the judgment of PROUDFOOT, J., was affirmed.

Davidson Black, for the plaintiffs.

Kingsford, for the defendant.

FIELD v. GALLOWAY.

Company—Action for unpaid stock—Payment.

Action against defendant to recover from him, in respect of his unpaid stock in a joint stock company, the amount of an unsatisfied judgment recovered by the plaintiff against the company. The defendant set up as a defence, that one B. recovered judgment against the company and duly assigned it to one G., who duly assigned part of the money recovered, to the extent of $500, to the defendant, which sum the defendant claimed to set off against the plaintiff's claim. The defendant further set up that one M., who was the assignee of the remainder of the judgment, recovered a judgment against the defendant in respect of his unpaid stock, which defendant paid to M., who released the company from their liability on the judgment against them, to the extent of the $500. The assignment of part of the judgment to defendant and the recovery of the judgment by M. against defendant was after the commencement of the plaintiff's action.

Held, that the defence set up by the defendant constituted a good defence to the action.

C. Ritchie, for the plaintiff.

W. Cassels, Q.C., for the defendant.

HALL v. GRIFFITH ET AL.

Action, settlement of—Right of solicitors to costs.

An action brought by a Montreal firm of solicitors for one C. against the now plaintiff, H., was suited for $3,700, of which H. paid $3,000 and gave the solicitors a note for $5,500, made by the defendant Griffith, endorsed by Gimson, and held by H. as endorsee, out of which they were to take the $700 and their costs. They sent a clerk to Toronto, where defendants lived, to settle matters. Not being able to do so he left the note with M. & Co., a Toronto firm of solicitors, for collection. M. & Co. commenced proceedings, and issued a writ which was served on the defendants. After this C. and the plaintiff settled the $700 between them. A settlement was proposed between the solicitors, which M. & Co. agreed to, provided their costs and the clerk's expenses to Toronto were paid; and defendants solicitors said they would recommend this being done. Negotiations for a settlement had been going on between the parties themselves, and on 26th November plaintiff proposed that defendants should pay $5,000 clear of everything to the plaintiff, which on 2nd December was accepted by defendants. This settlement was effected without the knowledge of the solicitors. On 4th December defendants' solicitors were informed of the other parties being interested in the note besides the plaintiff. On 6th December the parties met and settled matters by plaintiff accepting $5,000 in full of all claims under the action. The note which was held by M. & Co. was never delivered up to the defendants.

Held, that the effect of the agreement of 2nd December was that defendants should pay the costs, etc., and that the settlement made on the 6th December must either be treated as being intended to carry out such agreement, or if not, then that the settlement must be deemed to have been made with full knowledge through their solicitors and they must pay the costs, and that the settlement must be made through M. & Co.; that defendants in choosing to settle the amount of the note with H., without requiring the delivering up of the note, must be held liable for whatever lien or charge C. or others had upon the note, because they were not bound to pay it unless it was given up to them.

ONTARIO AND QUEBEC RAILWAY COMPANY v. PHILBRICK.

Railways—Tender of compensation for lands taken—Omission to offer crossing until arbitration commenced—Less amount awarded—Costs—Railway Act, sec. 9, sub-sec. 19.

By sec. 9, sub-sec. 19 of the Consolidated Railway Act, where the sum awarded by the arbitrators as compensation for land taken and damages is not greater than that offered by the company, the costs of the arbitration shall be borne by the opposite party, but if otherwise they must be borne by the company, and in either case they may, if not agreed upon, be taxed by the Judge.

On August 2nd, 1883, the O. and Q. R. W. Co. served P. with the statutory notices of their inten-