

tiff with costs and with a set-off to the defendant of one-half of the counsel fees at the trial. The amount for which judgment was given being within the jurisdiction of a County Court, the taxing officer ruled that the plaintiff's costs should be taxed on the County Court scale with the set-off in favour of the defendant provided by Rule 649. MIDDLETON, J., after conferring with the trial Judge, said that the intention of the latter was that the plaintiff's costs should be taxed on the Supreme Court scale, with the set-off specifically directed—that is, to make an "order to the contrary" (Rule 649); and, therefore, the appeal should not be disposed of until after any application that might be made to HODGINS, J.A., to make his judgment as issued conform to his intention, had been heard and disposed of. Grayson Smith, for the plaintiff. C. W. Kerr, for the defendant.

RE M. A. HOLLADAY CO.—LENNOX, J., IN CHAMBERS—NOV. 21.

Company—Winding-up—Petition for—Discretion—Refusal—Assignment in Trust for Creditors.]—Petition for the winding-up of the company under the Dominion Winding-up Act. The learned Judge said that sufficient had not been shewn to justify an order for the winding-up of the company under the direction of the Court, at this time. It appeared that the company's affairs were being wound up by a trustee for creditors; that a pending action against the trustee had been dismissed; and that, as a consequence, a dividend of 20 per cent. had been paid. Motion dismissed without costs and without prejudice to a new motion. This order was made in the exercise of a judicial discretion; and the question whether the petitioners were technically entitled to succeed was not considered. Reference to Re Strathy Wire Fence Co. (1906), 8 O.L.R. 186, and Re Cramp Steel Co. (1908), 16 O.L.R. 230. R. C. Levesconte, for the petitioners. J. A. Macintosh, for the trustee. J. R. L. Starr, K.C., for the company.

FITZGERALD V. CANADA CEMENT CO.—FALCONBRIDGE, C.J.K.B.—
NOV. 26.

Private Way—Obstruction—Damages—Reference.]—Action for damages for depriving the plaintiff of a right of way over a marl deposit to water cattle at Dey Lake. The learned Chief