

pleted their functions, and their acts were revised by their successors.

Held, also, that a notice of action is necessary before action brought for damages against a board of license commissioners acting under R.S.O., c. 194.

Marsh, Q.C., for the plaintiff.

Delamere, Q.C., for the defendant.

Practice.

ROSE, J.]

[Dec. 6th, 1889.

BROOKE *v.* BROWN.

Trusts and trustees—Provisions of will—Implied powers of trustees—Reasonable building lease—Specific performance of agreement for.

The plaintiffs were trustees under a will holding the legal estate in the property devised and bequeathed in trust to maintain themselves and their children, with remainder over to the children upon the death of themselves, with power to absolutely convey the property and to exclude any child from participating in the remainder.

Held, that the plaintiffs had implied power to make all reasonable leases. The plaintiffs made an agreement for a building lease to the defendant of part of the trust estate for twenty-one years, with a provision for compensation to the defendant at the end of the term for his improvements, and the draft lease settled provided that the plaintiffs should at the end of the term pay for such improvements or renew the lease for a further term of twenty-one years.

Held, that the provisions of the agreement and lease were reasonable, and bound the trust estate, and that the plaintiffs were entitled to specific performance.

Matthew Wilson for plaintiffs.

Morson for defendant.

Q.B Div'l Ct.]

[March 8.

CONMEE *v.* NORTH AMERICAN CONTRACTING COMPANY.

Costs—Taxation—Counsel fees—Witness fees—Re-opening taxation.

Upon appeals from taxation of costs, the court will not interfere with the discretion of the taxing officer as to the *quantum* or *quoties* of fees; and this rule covers any question of distribution or allotment of charges among different cases or branches of a case.

Where costs were awarded to the plaintiffs upon a postponement of the trial, and the case was not tried till after the taxation of such costs was closed, but it appeared upon appeal from the taxation that some of the witnesses allowed for were not called when the case was actually tried, the taxation was re-opened upon payment of costs, and the taxing officer was directed to reconsider the allowance of witness fees.

C. J. Holman for plaintiffs.

Aylesworth for the defendants.

C. P. Div'l Ct.]

[March 8.

LINK *v.* BUSH.

Costs—Set-off—Claim and counter-claim separate and distinct—Rule 1204.

The plaintiff recovered judgment against the defendant, with costs, upon a claim for the value of goods sold under a distress for rent, of which the defendant, the landlord, himself became purchaser; and the defendant recovered judgment against the plaintiff with costs upon a counter-claim for rent and damages to the demised premises. The judgment did not direct any set-off, and, the plaintiff's solicitors having asserted a lien upon the judgment for costs against the defendant, the taxing officer refused to allow a set-off of the costs awarded to plaintiff and defendant respectively.

Held, that the claim and counter-claim were separate, and sit distinct, and the judgments must be treated as judgments in separate actions; and Rule 1204 did not apply to enable the taxing officer to deduct or set off costs.

Under the circumstances of this case the Court (ROSE, J., dissenting) deprived the plaintiff, who was finally successful upon the appeals as to costs, of the costs of the appeals.

M. G. Cameron for plaintiff.

W. H. Blake for defendants.

FERGUSON, J.]

[March 21.

ST. CROIX *v.* McLACHLIN.

Arrest—Order for, signed by judge instead of clerk.

Con. Rule 544 provides that all orders made by a Judge of the High Court in Chambers shall be signed by the Clerk in Chambers.

Held, that an order for the arrest of the defendant signed by the judge who made it, and not by the clerk, was not properly issued.