Held, also, that the plaintiffs were entitled to the costs of the action down to the time of the passing of the Act, and, in addition, the costs of a motion in chambers for the disposal of the action, and that the defendants were entitled to the subsequent costs and to the costs of the appeal.

Observations on the course that should be followed by the Legislature in passing Acts to validate proceedings which are under attack in a pending action.

Delamere, Q.C., for the appellants.

Aylesworth, Q.C., and *D. W. Saunders* for the respondents.

[Sept. 13.

HODGINS *v.* CITY OF TORONTO ET AL.

Trees—Highways—Telephone—Tree Planting Act., R.S.O., c. 201—Municipal Act, R.S.O., c. 184, s. 479 (20).

The plaintiff was the owner of lands in the city of Toronto fronting on a street which was an original road allowance. The defendants, the Bell Telephone Company, with the assent, but without any express resolution or by-law of the city, or any notice or compensation to the plaintiff, cut off branches overhanging the street from trees growing within the plaintiff's grounds, and also branches off trees growing in the street in front of the plaintiff's grounds, alleging that the branches interfered with the use of the wires of a telephone system which they had contracted with the city to maintain. Section 3 of the Tree Planting Act, c. 201, had not been brought into force in Toronto.

Held, per OSLER and MACLENNAN, JJ.A., HAGARTY, C.J.O., dissenting, that s. 479 (20) of the Municipal Act, R.S.O., c. 184, applies only when s. 3 of the Tree Planting Act, R.S.O., c. 201, is in force, and that the plaintiff had no interest in or title to the trees growing in the street sufficient to enable him to complain of the cutting. But held also, per HAGARTY, C.J.O., and OSLER, J.A., MACLENNAN, J.A., dissenting, that as the overhanging branches of the trees growing within the plaintiff's grounds were not a nuisance, and in no way interfered with the use of the highway, the defendants had no right to cut them.

In the result, therefore, the judgment of the Junior Judge of the county of York was in part affirmed, the damages being reduced by $10.

H. M. Mowat for the city of Toronto.

S. G. Wood for the Bell Telephone Company.

F. E. Hodgins for the plaintiff.

[Oct. 3.

JOHNSON *v.* MARTIN.

Bills of exchange and promissory notes—Patent of invention—Fraud—Illegality.

The action was brought to recover the amount of certain promissory notes given by the defendant in April, 1888, on the purchase by him of patent rights in a washing machine. The notes were not marked with the words "given for a patent right," as required by R.S.C., c. 123, s. 12, and were taken by the plaintiff from the original holder with knowledge, as the jury found, of the nature of the consideration.

Held, not only that the plaintiff was in the same position as if the notes had been ear-marked with these words so as to enable the defendant to set up as against him any defences that would have been available against the original holder, but also that the original holder having committed a misdemeanor in accepting the notes without these words, and a further misdemeanor, in which the plaintiff participated, in transferring them to the plaintiff without these words, the plaintiff could not in any event recover.

Judgment of the County Court of Lennox and Addington reversed

C. J. Holman for the appellant.

Aylesworth, Q.C., for the respondent.

IN RE HAGGART BROS.' MFG. CO.

Company—Shares—Subscriptian—Charter—Allotment—Call—Statute of Limitations.

Persons named in the charter of a company as shareholders are liable as such for calls which may be afterwards made upon the stock stated in the charter to be held by them, and no further act of the directors in allotting such stock or giving them notice of allotment is necessary.

After the issue of letters patent in 1880, incorporating a company and naming certain persons as shareholders, these persons stated to certain of the directors of the company that