SMITH, J.—. . . "It is true in *Gribble* v. *Buchanan*, a case very like the present, JARVIS, C.J., said that though the construction contended for by the plaintiff was reasonable the practice was the other way. In the case, however, of *Ellis* v. *Desilva* the Court of Appeal seem to have placed the practice on a more reasonable footing."

EDWARDS v. HOPE.

Set-off of damages and costs—Cross judgments—Solicitor's lien—Ord. 65 r. 14.—Reg. Gen. Hil. Term 1853 r. 63 (Ont. Rule Q. B. 52).

Upon an application to set-off cross judgments in distinct actions the Court may, notwithstanding Ord. 65 r. 14, order that the set-off shall be subject to the lien for costs of the solicitor of the opposite party. Reg. Gen. 63 Hil. Term 1853 (Ont. Rule Q. B. 52) is superseded by Ord. 65 r. 14 and if the latter applies to set-off of judgments in distinct actions the Court has a discretion to allow the set-off subject to, or free from, the solicitor's lien, and if Ord 65. r. 14 does not apply the Court has the like discretion which the Common Law Courts had prior to Reg. Gen. 63, which is superseded.

[C. A.—14 Q. B. D. 922.]

BRETT, M.R.—. . . "Ord. 65 r. 14 supersedes the old practice under R. G. H. T. 1853 r. 63. Rule 14 says that a set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought. Whether this Rule does, or does not, apply to cases where the set-off is claimed in different actions the same results follow. If it does, the Court has a discretion whether or not it shall allow the set-off. If it does not, the old practice before the Rule of 1853 remains, by which the Court had a discretion, to order what it considered just with regard to the solicitor's lien."

Note.—In Ontario there is no Rule in force identical with the English Rule, Ord. 65 r. 14, which provides that "a set-off for damages and costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought." According to the above decision, therefore, it would seem that Rule 52 (Holmested's Rules and Orders, p. 505) is still in force in this Province.

IN RE BROAD AND BROAD.

Costs—Taxation—Solicitor and client.

Where costs of an unusual and unnecessary character are incurred, a solicitor cannot recover them from his client, even though incurred by his express direction, unless the solicitor informs the client that even if successful he will not, or may not, be able to recover such costs from the opposite party.

Costs of a third counsel disallowed.

[Divl. Court.—15 Q. B. D., 252.

FIELD, J., referring to the decision of the Court of Appeal in *Blyth & Fanshawe*, 10 Q. B. D. 207, said: "I am of opinion that when the Court of Appeal clearly lays down a general principle as the ground of their decision in the case before them we are bound to follow it. BAGGALLAY, L. J., in delivering judgment in that case, says: 'I take it to be the general rule of law, and an important rule, that is to be observed in all cases, that if an unusual expense is about to be incurred in the course of an action, it is the duty of the solicitor to inform his client fully of it, and not to be satisfied simply by taking his authority to incur the additional expense, but to point out to him that such expense will, or may, not be allowed on taxation between party and party whatever may be the result of the trial.'"

THE LONDON AND YORKSHIRE BANK v. COOPER.

Production of documents—Documents held in right of another.

The defendant had made a promissory note as security for money due by a limited company to the plaintiffs. The defendant had also been liquidator of the company, but the liquidation was at an end and the company had been dissolved. In an action on the note the defendant objected to produce the banker's pass-book and directors' minute-book of the company, on the ground that they were in his custody only as liquidator.

Held, that the plaintiffs were entitled to inspection of the documents as there were no interests which could be affected by their production, except those of the parties to the action. *Murray* v. *Walter*, Cr. P. 114, *Kearsley* v. *Phillips*, 10 Q. B. D. 465, and *Vivian* v. *Little*, 11 Q. B. D. 370 distinguished.

[Divl. Court—15 Q. B. D 7.

FIELD, J.—The documents in question are undoubtedly in the defendant's possession; he has a property in them, and power to deal with them in any way he pleases. The cases, therefore, upon which he relied do not apply. In *Kearsley* v. *Phillips*, which followed *Murray* v. *Wa ter*, the Court refused to order inspection of documents which were in the defendant's possession as joint trustee with another person, not a party to the action, and were the muniments of their title as mortgagees. . . . In *Vivian* v. *Little* the Court held that the