

to the position which was given effect to by the judgment in appeal.

Mr. Moss, however, attempted to support the judgment upon another ground argued before Mr. Justice Street, but as to which that learned Judge did not find it necessary to express an opinion. His contention was that the case of *Jarvis v. Great Western R. W. Co.*, 8 C. P. 280, was not applicable to such an agreement as that between the solicitor and client in this case. That case was followed (the late Sir Adam Wilson, dissenting,) in a case of *Stevenson v. City of Kingston*, 31 C. P. 333, and has been recognized in subsequent cases, to which it is unnecessary to refer, and also by the Legislature in the amendment which it made to the Municipal Act, sec. 320, sub-sec. 3, enabling a solicitor to tax costs under an agreement such as that which was effected between the solicitor and the clients by the agreement authorized by the by-law of the 10th July, 1902.

Mr. Moss in his able argument referred to and relied upon the case of *Galloway v. Corporation of London*, L. R. 4 Eq. 90, and also upon *Henderson v. Merthyr Tydfil Urban District Council*, [1900] 1 Q. B. 434.

There is no doubt that the judgment of Vice-Chancellor Wood in the *Galloway* case is opposed to the decisions in our Courts, and the practice which has prevailed here; and *Henderson v. Merthyr Tydfil* perhaps is also, although in the latter case reliance was placed upon the provisions of the English Attorneys' Act of 1870, which authorized an agreement between a client and solicitor for compensating the solicitor by a different rate of remuneration from that fixed by the tariff.

It seems to us that we ought to follow what we understand to be the principle of the decision in *Jarvis v. Great Western R. W. Co.*, which, as I have said, has been recognized and acted upon, and which is the well understood rule in this Province. It is true that in that case the agreement differed from the agreement between the solicitor and client in this case. In that case, the agreement was that the solicitor should receive an annual salary for all his services, and that if costs were recovered in litigated matters, he should also receive those costs; and some stress was placed in the judgment upon the fact that there was never any liability upon the part of the client to pay the solicitor these costs. They only became his in the event of their being recovered in the litigation.

In this case the agreement provides that costs which the corporation recovers are to be paid to the treasurer, and they