

of the Assignment Act, not being covered by any of the expressions, "real and personal estate, rights, property, credits and effects," used in s. 6 of the Act, and being something which could not be reached by creditors under ordinary legal proceedings.

2. Such a right of action is not assignable under sub-s. (e) of s. 39 of the King's Bench Act. *Blair v. Asselstine*, 15 P.R. 211, and *McCormack v. Toronto Railway Co.*, 13 O.L.R. 656, followed.

3. Even if the plaintiff's claim had been validly transferred to the assignee, the defendant would be entitled to maintain his counterclaim and to have the plaintiff's damages paid by deducting them from it, as both claim and counterclaim arose out of the same transaction, and rule 293 of the King's Bench Act expressly provides that the trial judge may order such set-off to be made. *Shrapnel v. Laing*, 20 Q.B.D. 334; *Lowe v. Holme*, 10 Q.B.D. 286, and *Newfoundland v. Newfoundland Ry. Co.*, 13 A.C. 199, followed.

4. The discretion of the judge in making such order should not be interfered with, although the effect was to deprive the plaintiff's solicitor of any lien for costs on the amount awarded to his client whether for damages or costs. *Westacott v. Bevan*, [1891] 1 Q.B. 774; *Pringle v. Gloag*, 10 Ch.D. 680, and *McPherson v. Allsop*, L.J. 8 Ex. 262, followed.

*Hudson*, for plaintiff. *Affleck*, for defendant.

Full Court.]

[June 14.

CITY OF WINNIPEG v. WINNIPEG ELECTRIC Ry. Co.

*Pleading—Amendment—Defences arising after delivery of statement of defence—King's Bench Act, rule 339—Estoppel.*

Appeals by both parties from judgment of MATHERS, J., noted ante, p. 371, dismissed. Costs of both appeals to be costs in the cause.

*Held*, also, that the permission to amend setting up facts alleged to create an estoppel does not imply a decision that such facts would actually work an estoppel.

*Wilson*, K.C., and *Hunt*, for plaintiffs. *Munson*, K.C., and *Laird*, for defendants.