

dence by the withdrawal of lateral support resulting from the trenching operations in the street. It does not matter as to the sort of soil which was found below, the removal of which caused the disturbance in the plaintiff's land. It was not necessary to prove negligence in the methods of work adopted by the defendants; the work must be done so as not to disturb the soil of the frontagers. No objection was made to the Judge's charge or as to the questions submitted to the jury. It would be a proper course in cases if this kind to ask the jury whether buildings added to the weight of the land requiring lateral support, and whether the same subsidence would have occurred if the land had been without the buildings.

D. C. Ross, for the defendants. *A. C. McMaster*, for the plaintiff.

Province of Manitoba.

COURT OF APPEAL.

Full Court.]

[Feb. 17.

LES SOEURS DE LA CHARITE v. FORREST.

Costs—Taxation of—Action—Counterclaim—King's Bench Act.

For the purpose of the taxation of costs, a counterclaim was, before the amendment of sub-sec. (c) of s. 2 of King's Bench Act, by s. 17 of c. 12 of 7 & 8 Edw. VII. providing that the word "action" should include suit, set-off and counterclaim, always treated as a cross-action: *Emerson v. Guerin*, 12 P.R. 799, and that amendment has made no change in this respect, but was passed to make it clear that the new rule limiting the amount of costs that might be taxed, introduced by s. 1 of the same statute, should apply to set-offs and counterclaims as well as to actions. The plaintiffs, therefore, who became entitled to the costs of their action and of the defendant's counterclaim, were not limited to \$300 (outside of disbursements) on both bills, but only on each separately.

Blackwood and *A. Bernier*, for plaintiffs. *Deacon*, for defendant.