

Nov. 15, 1882.]

THE LEGAL POSITION OF THE SUEZ CANAL—ONTARIO REPORTS.

[Co. Ct.]

The Powers throughout the negotiation recognized the absolute right of the Porte to regulate the tolls, and the recommendations of the conference were carried out as the act of the Porte. The company refused to accept the terms agreed upon, and even issued a notice that the canal would be closed. They only yielded under pressure of the despatch of an Egyptian force to seize the canal; and accepted the new dues only under protest until 1876, when an agreement was come to slightly modifying in the company's favour the terms imposed by the conference. About the same time a dispute arose as to jurisdiction, the company claiming to have all disputes in which they were concerned tried by the French Consular, instead of the Egyptian Court. The French Government, however, repudiated any claim that the company was solely under French jurisdiction, and the controversy came to an end on the establishment of the international tribunals in Egypt in 1874. The purchase of the Khedive's shares by the English Government, though it gave the Government a *locus standi* to enforce the rights of the company in the agreement with the Khedive and the Sultan, could not affect its international position, and some negotiations, which were started shortly before that purchase, for the handing over the management of the canal to an International Commission, fell to the ground before the decided opposition of the Porte. At the outbreak of the Russo-Turkish war, M. de Lesseps proposed a general agreement between the European Governments, that the canal should at all times be open for ships of war as well as of peace, the disembarkation only of troops and munitions of war being forbidden. Lord Derby, however, refused to entertain the proposal of any such agreement, and contented himself with a notice to both the belligerent governments that any attempt to stop the canal would be incompatible with the maintenance of Her Majesty's Government of passive neutrality. It would seem, therefore, that there are no special international obligations affecting the Suez Canal at all. It is simply a part of the territory of Egypt and her suzerain the Sultan, subject in all respects to their control, but leased for ninety-nine years to a company formed under and governed by French law, upon terms which, in so far at least as regards the tolls to be levied for passage, the Sultan has voluntarily declared he will not alter without consulting the Powers. It is also subject to whatever rights

of user can be claimed over it by international law in consequence of its being one of the highways of the world, and the only passage between two open seas, which rights have been to some extent recognized by the voluntary declaration of the Sultan above referred to. What the measure of such right may be it is impossible to say, but they cannot be greater than those which obtain in a natural strait between two seas where both shores are in the territory of the same power. It seems to be the accepted opinion of the jurists that in such a case, while the territorial power has no power to prevent the passage of merchant ships, no other power has a right to claim passage for ships of war, or troopships. In law, therefore, as well as in fact, the canal can only be kept open for English troopships and ships of war either by special treaty with all the European powers or by England's possessing in some form or another the control of the territory within which the canal is situated.—*Law Times*.

REPORTS.

ONTARIO.

(Reported for the LAW JOURNAL.)

COUNTY COURT OF THE COUNTY OF MIDDLESEX.

BERTRAM V. BAWDEN.*

Solicitor and Client—Costs—Arrest.

A solicitor's claims against his client for fees and disbursements is not a claim for costs which exempts the client from arrest for non-payment of costs.

[London, Oct. 24—Davis, J. J.]

Defendant was arrested on a *capias* for plaintiff's fees &c., as a solicitor, in connection with the defence of the defendant in an action in the H. C. J.

A. J. B. Macdonald for defendant applied to set aside the order for *capias*, &c., on the ground that the plaintiff's claim was for costs and that defendant could not be arrested for non-payment of costs:—Sec. 3 cap. 67 Revised Statutes Ont.

Bartram shewed cause.—The action is for the solicitor's fees against his client, and not for his costs—when defendant pays the fees, &c., they will become the defendant's costs. The statute refers to costs between party and party. There are no costs between solicitor and client except