

than paper discounted in the ordinary course of banking business, as to which the bank had its recourse against all persons whose names appeared on the face of the paper, and were not obliged to look to any other for payment.

Appeal dismissed with costs.

Henry, Q.C., and Ross, Q.C., for appellant.

W. Cassels, Q.C., and W. B. Ritchie, for respondent.

#### MUNICIPALITY OF CAPE BRETON v. MCKAY.

*Municipal corporation—Appointment of board of health—R.S.N.S., 4th ser., c. 29—37 Vict., c. 6, s. 1 (N.S.)—42 Vict., c. 1, s. 6 (N.S.)—Employment of physician—Reasonable expenses—Construction of contract—Attendance upon small-pox patients for the season—Dismissal—Form of remedy—Mandamus.*

S. 67 of the Act by which municipal corporations were established in Nova Scotia (42 Vict., c. 1), giving them "the appointment of health officers . . . and a board of health" with the powers and authorities formerly vested in courts of sessions, does not repeal c. 29 of R.S.N.S., 4th ser., providing for the appointment of boards of health by the Lieutenant-Governor in Council. RITCHIE, C.J., *dubitante* as to appointment by the executive in incorporated counties.

A board of health appointed by the executive council, by resolution, employed M., a physician, to attend upon small-pox patients in the district "for the season," at a fixed rate of remuneration per day. Complaint having been made of the manner in which M.'s duties were performed, he was notified that another medical man had been employed as a consulting physician, but refusing to consult with him he was dismissed from his employment. He brought an action against the municipality setting forth in his statement of claim the facts of his engagement and dismissal, and claiming payment for his services up to the date at which the last small-pox patient was cured, and special damages for loss of reputation by the dismissal. The Act allows the board of health to incur reasonable expenses, which are defined to be services performed and bestowed and medicine supplied by physicians in carrying out its provisions, and makes such expenses a district, city, or county rate, to be assessed by the justices and levied as ordinary county rates.

*Held*, 1. Per FOURNIER, TASCHEREAU, and Gwynne, JJ., that the employment of M. "for

the season" meant for the period in which there should be small-pox patients requiring his professional services.

2. Per FOURNIER, TASCHEREAU, Gwynne, and PATTERSON, JJ., that notwithstanding no provision was made for supplying the municipality with funds in advance to meet the reasonable expenses that might be incurred under the Act, a claim for such expenses could be enforced against a municipality by action.

3. Per RITCHIE, C.J., and STRONG, J., that the only mode of enforcing such a claim is by a writ of mandamus to oblige the municipality to levy an assessment.

4. Per FOURNIER, TASCHEREAU, and Gwynne, JJ., affirming the judgment of the court below, that M. was entitled to payment at the rate fixed by the resolution of the board up to the time in which there ceased to be any small-pox patients to attend.

5. Per RITCHIE, C.J., STRONG and PATTERSON, JJ., that the claim of M. was really one for damages for wrongful dismissal, which is not within the provision in the act for reasonable expenses.

Appeal dismissed without costs.

W. B. Ritchie for appellant.

Henry, Q.C., for respondent.

New Brunswick.]

[May 12.

LAMB v. CLEVELAND.

*Statute—Repeal of—Restoration of former law—Distribution of intestate estate—Feme covert—Husband's right to residuum—Next of kin.*

The Legislature of New Brunswick, by 26 Geo. 3, c. 11, ss. 14 and 17, re-enacted the Imperial Act, 22 and 23 Car. 2, c. 10 (Statute of Distribution), as explained by s. 25 of 29 Car. 2, c. 3 (Statute of Frauds), which provided that nothing in the former Act should be construed to extend to estates of *femes coverts* dying intestate, but that their husbands should enjoy their personal estates as heretofore.

When the Statutes of New Brunswick were revised in 1854, the Act 26 Geo. 3, c. 11, was re-enacted, but s. 17, corresponding to s. 25 of the Statute of Frauds, was omitted. In the administration of the estate of a *feme covert* her next of kin claimed the personality on the ground that the husband's rights were swept away by this omission.