

company was entitled to rescission on the ground that the directors could not validly bind the company by a contract for the sale of their own property, without the company having independent advice, and that the notice in the memorandum and articles of association of the dual character in which the directors were acting, was ineffectual to make valid a contract entered into under such circumstances, and that the company had not lost its rights to rescission by reason of delay, because the time did not run against the plaintiff company whilst it was dominated by the directors of the syndicate, nor yet by the alteration of the property by its working, which he held to be the act of the vendor syndicate by its directors.

COSTS - APPEAL AS TO COSTS—DISCRETION PRACTICE—JUDICATURE ACT 1873, (36 & 37 VICT., c. 66) s. 49—RULE 976 (ONT. JUD. ACT, s. 72)—(ONT. RULE 1130.)

Bew v. Bew (1899) 2 Ch. 467, was an action brought by a husband against his wife to obtain a declaration that in respect of certain moneys invested on mortgage in the wife's name, she was trustee thereof for the plaintiff. The wife denied the trust, and died pending the action, and the suit was revived against her executors. Kekewich, J. who tried the action, made the declaration asked by the plaintiff, but ordered that the defendant's costs (including the costs, charges and expenses of the deceased wife) as between solicitor and client, should be paid out of the trust fund which had been paid into court. The plaintiff appealed from so much of the judgment as gave the defendants as trustees, costs charges and expenses of the action as between solicitor and client, on the ground that the wife had denied the trust, and that the judge at the trial had assumed that the costs were not in his discretion. The Court of Appeal (Lindley, M.R. and Jeune, P.P.D. and Romer, L.J.) held, that under the rule laid down in *The City of Manchester*, 5 P.D. 221, the appeal would lie without leave, on the ground that although the costs were in the discretion of the judge at the trial, yet he had disposed of them on the supposition that his discretion was excluded, and on this point they refused to follow *Charles v. Jones*, 33 Ch. D. 80, but the Court of Appeal thought that where an order is made for payment of "costs, charges and expenses" no appeal can be had as to the costs, if the order as to charges and expenses is not appealable. In the result the judgment of Kekewich, J. was varied as to costs, by directing