

MCDUGALL, Co.J.: The only costs that can be given under the statute are witness fees on the Division Court scale, and the per diem allowance to the two judges from outside counties. The travelling expenses are expressly directed by the section of the statute to be paid by the clerk of the municipality out of the deposit made with him by the complaining ratepayer, the appellants, and the balance of such deposit ordered to be returned to them. The Court has no discretion to order these expenses to be paid otherwise. The order for costs will be made in that way.

DARTNELL, Co.J., and MCGIBBON, Co.J., concurred.

Province of Nova Scotia.

SUPREME COURT.

Graham, J.]

HART v. GIFFIN.

[Nov. 1.

Statute of Limitations—Executor—Part payment.

This was an action brought on the 10th day of January, 1898, on a judgment recovered on November 24, 1876. The defence was the Statute of Limitations. An execution was issued Dec. 17th, 1877, returnable within sixty days, and the sheriff sold the defendant's lands under the execution, and credited the proceeds on the execution. The plaintiff contended that this was part payment under the statute.

Held, that there was part payment within the meaning of the statute, following the reasoning in the case of *Chinnery v. Evans*, 11 H.L. Cas. 115, where enforced payment was held to be equivalent to voluntary payment for the purposes of the Statute of Limitations.

J. A. Fulton, for plaintiff. *Macgillivray*, Q.C., for defendant.

Province of New Brunswick.

SUPREME COURT.

Full Bench.]

CUSLING v. KELLY.

[Nov. 4.

Woodmen's Lien Act—Logs detained in transit—Order for sale.

Logs detained on a stream for want of sufficient water for driving are in transit within the meaning of s. 12 of the Woodmen's Lien Act, 1894, and an order of sale made by a County Court Judge under s. 18 of the Act, while the logs are so detained is invalid.

L. A. Currey, Q.C., for appellant. *A. R. Slipp* and *C. E. Duffy*, for respondent.

Full Bench.] WATEROUS ENGINE WORKS CO. v. POIRIER.

[Nov. 11.

Trover—Plea of purchase under an equity decree to which plaintiff was not a party.

In an action of trover defendant pleaded that by a decree of the Supreme Court in Equity it was adjudged that he had a lien on the property involved,