

representatives of F. was permitted to appear, and entered an appearance by her attorney.

Plaintiff's claim was sent to a referee to ascertain and report the amount due, and after a hearing at which C. F. was represented the referee reported as due the sum of \$808.45, including \$338.96 for subsequent advances.

On application to MEAGHER, J. at Chambers for order for foreclosure and sale the learned judge made an order in which he reduced the amount of plaintiff's claim to \$435.25, with interest to the date of the sale, and deprived plaintiff of costs on the ground that her solicitor had failed to take out a certificate as required by the Barristers and Solicitors Act 1899, N.S. Acts 1899, c. 27, s. 27.

On appeal: *Held*, 1. The learned judge had authority to open up the question as to the correctness of the referee's report, but was wrong in his conclusion, the recital in the assignment being sufficient as between the parties to make the subsequent advances a charge upon the property, and there being sufficient evidence to support the finding that the advances claimed were actually made.

2. Plaintiff was entitled to recover interest up to the date of payment by the sheriff, and not, as allowed, only to the date of sale.

3. The procedure to enforce compliance with the provisions of the Barristers and Solicitors Act being by fine and suspension under ss. 31 and 32 of the act, and there being no provision enacting in express terms that attorneys who fail to take out certificates as required shall be debarred from recovering their costs, or that parties employing such attorneys shall be debarred from recovering, there is nothing to prevent plaintiff from recovering her attorney's costs from the opposite party to the suit.

T. J. Wallace, for appellant. *J. J. Power*, for respondent.

Full Court. | SMITH v. CANADIAN PACIFIC RAILWAY CO. [Feb. 4.]

Railway company—Negligence in manner of running train—New trial—Ordinary incident in railway travelling.

Plaintiff was a passenger by a night train on the defendant company's railway between Montreal and Toronto. After retiring to the berth assigned to her—an upper one—she endeavored to make some change in the manner in which the berth was made up. She next tried to reach the other end of the berth from the inside, but, just as she leaned to the inside of the car, there was a violent lurch and jerk which threw her right into the middle of the passage way on her back, inflicting severe injuries.

On the trial of the action brought by plaintiff to recover damages for the injuries sustained by her, the learned trial judge withdrew the case from the jury for the reasons (1) that there was no evidence of negligence on the part of the defendant, and (2) that the plaintiff's evidence was consistent with the view that her own efforts to better her condition, in her fear arising from the motion of the car, resulted in the accident.