Held, that the reservation by the Crown in the grant was merely an easement to the public, notwithstanding which the plaintiff was a riparian proprietor, and as such entitled to complain of the injury caused by the penning back of the water thereon.

The parties desired the assistance of scientific evidence as to the height of the defendant's dam and the effect of raising it. The Court (Proudfoot, J.) appointed an engineer to inspect and report thereon, reserving the costs until his report should be obtained.

Proudfoot, J.] [Dec. 21.

DALBY v. BELL.

Consent order—Mistake of parties—Costs.

A decree had been made on consent, referring to the Master the question whether or not the defendant had performed certain work for the plaintiff at a specified rate, who reported that he had not. On appeal, the Court (Proudfoot, J.) considering that this was a question that should have been disposed of by the Court, set aside the report and directed a trial to be had upon that issue, reserving the costs of the proceedings before the Master and of the appeal.

Held, that these costs having been incurred in a proceeding consented to under a common mistake of parties as to the proper tribunal to decide the question, each party should bear his own costs.

Proudfoot, J.] [Dec. 21.

HEAMAN v. SEALE.

Fraudulent preference—Defending one suit and withdrawing plea in another—R. S. O., ch. 118, s. 1.

The defendant, C., defended an action brought against him by the plaintffs, while in an action brought against him by the defendant, S., he entered an appearance, and filed a plea some days before the same were due, and on the day of filing the plea filed a *relicta verificatione*, whereupon judgment was signed and execution issued.

Held, that these proceedings did not offend against the provisions of the Act R. S. O. ch. 118, s. 1, following in this the decisions in *Young* v. *Christie*, 7 Gr. 312, *McKenna* v. *Smith*, 10 Gr. 40, *Labatt* v. *Birell*, 28 Gr. 593, and *Mackenzie* v. *Watt*, decided in appeal 28th Nov., 1881,—not yet reported.

Proudfoot, J.] [Dec. 21

DUMBLE v. DUMBLE.

Will, construction of—Devise to children—"In case of death," meaning of—Vested interest.

The testator, after having duly made his will, intending to modify it, wrote a letter to his wife, in which he said, "I wish my dear wife and our children to have all my property to be divided equally, my wife to have the use of the whole until the children are of age; in case of death of my children, my wife to have the use of the property for her lifetime, and then to go to my brothers and sisters." The testator left two children, who died during the lifetime of their mother, under age and unmarried.

Held, that the words "in case of death of my children" referred to death before the tes, tator, so that the children took vested interests which their mother took upon their death.

Bethune, Q. C., and *Watson*, for plaintiff; *Maclennan*, Q. C., for defendant.

CHAMBERS.

Boyd, C.] [Dec. 9.

DOMINION, &C., CO. v. STINSON.

Foreign commission—Evidence not used—Costs

The plaintiff obtained an order for the issue of a foreign commission to examine a witness. The order contained the usual direction that the costs be costs in the cause.

The evidence was taken, but neither the plaintiff who succeeded in his suit nor the defendant put it in at the trial.

The taxing officer disallowed the costs of the commission on the ground that the evidence was not used. On reference to him, Boyd, C., held that the direction in the order as to costs did not preclude the taxing officer from disallowing the costs to the plaintiff on the ground that the evidence had not been used.