

interest, the judgment might, at the option of the plaintiff, have been amended by reducing it by the amount claimed for interest, or limiting the defence accordingly.

Costs withheld from the successful respondent where the objection as to laches was substantiated by affidavits filed for the first time in the Court of Appeal.

Alexander Stuart for the appellant.

W. E. Middleton and *A. B. Cox* for the respondent.

ARMOUR, C.J.]

[April 5.

FEWSTER v. TOWNSHIP OF RALEIGH.

Costs—Scale of—Drainage—Action—Reference—54 Vict., c. 51, s. 24 (3).

Action brought in the High Court of Justice, in 1890, to recover damages for injuries caused to the plaintiff's land by reason of the negligent construction of certain drains by the defendants, and by reason of their omission to keep such drains in repair, and for a mandamus.

After a judgment referring the action to a special referee, set aside by the Court of Appeal, 14 P.R. 429, an order was made under s. 11 of the Drainage Trials Act, 1891, 54 Vict., c. 51, referring the action to the drainage referee, who made his report in favour of the plaintiff, assessing damages at over \$500 and allowing the plaintiff costs. He referred the taxation of the plaintiff's costs to the clerk of the County Court of the county of Kent, who taxed them upon the scale of the County Courts.

The plaintiff appealed from the taxation to a judge of the High Court in Chambers.

W. H. Blake, for the plaintiff, contended that as the proceedings were begun by action in the High Court and the drainage referee acquired his jurisdiction by an order of reference under s. 11 of 54 Vict., c. 51, and not by proceedings under ss. 5, 6, and 7, and as the amount recovered by the plaintiff was beyond the jurisdiction of the County Court, the costs should be on the scale of the High Court, relying on 55 Vict., c. 57, s. 6 (2) and 57 Vict., c. 56, s. 114.

H. W. Mickle, for the defendants, contended that no appeal lay from the taxation by the clerk of the County Court to a judge of this court, and that, at all events, the costs were properly taxed on the scale of the County Court, in accordance with 54 Vict., c. 51, s. 24 (3), and 57 Vict., c. 56, s. 109, no other tariff having been framed.

ARMOUR, C.J., held that the costs were properly taxed upon the County Court scale, no provision to the contrary having been made in the order of reference.

Appeal dismissed with costs.

FALCONBRIDGE, J.]

[April 18.

HAIST v. GRAND TRUNK R.W. CO.

Trial—Stay of—Appeal from order directing new trial.

A second trial of an action was stayed pending an appeal to the Court of Appeal from the order directing such trial, where the principal question upon