able, yet the refusal of the Divisional Court to set aside an award which followed that opinion, was appealable. Williams, L.J., dissented and considered that no appeal lay from an award following the decision of the Court on a case stated on the ground that that decision was erroneous. On the case stated by the arbitrator the court had held that the price of the machines bought by the plaintiffs to mitigate the damages occasioned by the defective machines supplied by the defendant was recoverable as damages for breach of the defendants' contract, and Williams, and Kennedy, L.JJ., agreed with that conclusion, but Buckley, L.J., doubted, thinking the award was not sufficiently explicit, that the purchase of the new machine was reasonable and prudent for the mitigation of damages apart from its prudence for the plaintiffs' pecuniary advantage independent of the contract, he therefore favoured the remittal of the award.

PRACTICE—COSTS—TRIAL BEFORE REFEREE—"EVENT"—SEPARATE ISSUES—ISSUE ON WHICH PLAINTIFF SUCCEEDED—STATUTE OF LIMITATIONS—NO ORDER AS TO COSTS OF ISSUE ON WHICH PLAINTIFF SUCCEEDED—RULES 976, 977—(ONT. RULE 1130

Slatford v. *Erlebach* (1912) 3 K.B. 155. It is perhaps somewhat rash to say it, but this is a case which appears to us to have been decided by the court on the authority of Rule 976 which really had no application, whereas Rule 977 which was never referred to, appears to be the one that really governed the case. The action was for breach of contract, the defences being, denial of contract, and Statute of Limitations. The case was referred to a referee for trial, who found the issue as to the contract in favour of the plaintiff and the issue of the Statute of Limitations in favour of the defendant. Judgment was given dismissing the action with costs, except in so far as they had been increased by the defences on which the defendant had failed. Rule 976 provides inter alia that "where any action, cause or matter or issue is tried with a jury, the costs shall follow the event unless the judge by whom the cause, matter, or issue is tried, or the court, shall, for good cause, otherwise order." The plaintiff under this Rule claimed to be entitled to the costs of the issues on which he had succeeded. The taxing master held that he was so entitled. Horridge, J., thought that he was not, and the Court of Appeal (Williams,