

There was a total failure of consideration, and the plaintiffs' action is dismissed with costs.

There will be judgment for the defendants upon the counterclaim, with a reference to the Master to ascertain the damages.

The above findings embody my own opinion upon the weight and credibility of the testimony, the admitted facts, and the written and printed documents.

By and with the consent of counsel for all parties an order was made (as of 27th June, 1908), under Con. Rule 94, referring it to Mr. E. H. Keating, C.E., to inspect and report on certain matters as therein set forth.

His report was, after long delay, taken up by the parties and was presented to me on the 16th ult. . . .

In sending an expert of the standing of Mr. Keating to the locus in quo, I was not without hope that all parties might adopt some temporary or permanent *modus vivendi* in order to avoid a result which would in the end turn out to be disastrous to one party or the other, and I observe that on 28th August Mr. Keating suggested to the parties, as worthy of a fair trial, a method of repairing the defective joints. If that device has not been tried for the benefit of whom it might concern, no doubt the condition of the pipe will not have improved in the interval.

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BOYD, C.

FEBRUARY 8TH, 1909.

CHAMBERS.

AMYOT v. SUGARMAN.

*Costs—Scale of—Increased Jurisdiction of County Court—  
Amount Involved—Ascertainment “as Being Due”—  
County Courts Act, R. S. O. 1897 ch. 55, sec. 23 (2)—  
4 Edw. VII. ch. 10, sec. 10.*

Appeal by plaintiffs from the ruling of the local registrar at Ottawa that the costs awarded by the judgment to be paid to plaintiffs by defendant of this action, brought in the High Court, should be taxed on the County Court scale.

The appeal was heard at Ottawa.

A. Lemieux, for plaintiffs.

R. J. Sims, for defendant.