

THE
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SEPTEMBER 16TH, 1907.

DIVISIONAL COURT.

HAMILTON v. HAMILTON, GRIMSBY, AND BEAMS-
VILLE ELECTRIC R. W. CO.

*Costs — Taxation — Counsel Fee — Trial or Assessment of
Damages — Interlocutory Judgment — Noting Pleadings
Closed — Items of Tariff.*

Appeal by defendants from order of FALCONBRIDGE, C.J.,
ante 197, dismissing defendants' appeal from certificate of
senior taxing officer as to allowance of a counsel fee of \$125
as fee with brief at trial.

J. G. Gauld, Hamilton, for defendants, contended that
there was no trial but only an assessment of damages, and
that not more than \$10 could be allowed under item 152 of
the tariff.

No one contra.

THE COURT (MEREDITH, C. J., MACMAHON, J., MA-
GEE, J.), held that there having been no interlocutory judg-
ment, but merely a noting of the pleadings as closed, the
proceedings were not to be regarded as an assessment of
damages.

MEREDITH, C.J., speaking for himself, expressed the
opinion that the note to item 153 of the tariff applies to
item 152 as well, and thus the counsel fee of \$10 on assess-
ment of damages is liable to be increased.

Appeal dismissed without costs.