

DECEMBER 15TH, 1903.

C.A.

## WEBB v. CANADIAN GENERAL ELECTRIC CO.

*Appeal—Court of Appeal—Order Directing New Trial—Second Trial Taking Place Before Appeal Heard—Abandonment of Appeal—Order Quashing.*

Appeal by defendants from the order of a Divisional Court (ante 322) setting aside a nonsuit and directing a new trial.

After the appeal had been set down the action came on for a second trial, and judgment was given in favour of plaintiff (ante 865).

Upon the appeal coming on for hearing, W. R. Riddell, K.C., and John Green, Peterborough, for plaintiff, objected to the appeal being heard, the new trial directed by the order appealed against having actually taken place.

E. E. A. DuVernet, for defendants, appellants.

The Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, J.J.A.) treated the objection as a motion to quash the appeal, and made an order quashing it without costs.

BRITTON, J.

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CHAMBERS.

## JOHNSTON v. RYCKMAN.

*Costs—Taxation—Appeal—Items not Objected to before Taxing Officer.*

Motion by plaintiff to vary terms of order (ante 1088) upon appeal from certificate of taxing officer.

W. R. Smyth, for plaintiff.

C. W. Kerr, for defendant Ryckman.

BRITTON, J., held that the costs of defendant Ryckman which really pertained to the matter of counsel fees in question on the appeal, should not be paid by plaintiff, but that there was no jurisdiction to interfere as to any items to which objections were not made before the taxing officer, as prescribed by Rules 1182 and 1183: Snowden v. Huntington, 12 P. R. 248; Quay v. Quay, 11 P. R. 258; Platt v. Grand Trunk