

Moss, J.A.

OCTOBER 23RD, 1902.

C. A.—CHAMBERS.

OTTAWA GAS CO. v. CITY OF OTTAWA.

Leave to Appeal—Question of Costs—Right to Costs against Opposite Party—No Liability to Solicitor—Corporation Solicitor Paid by Salary—Change in By-law—Statute—Conflict of Decisions.

Motion by defendants for leave to appeal to the Court of Appeal from the order of a Divisional Court (ante 647) reversing an order in Chambers upon a question of taxation of costs.

J. H. Moss, for defendants.

H. T. Beck, for plaintiffs.

Moss, J.A.—As the case stands at present, the defendants have been held not entitled to include in the costs taxable against the plaintiffs, any profit costs. The action was finally dismissed with costs on the 14th September, 1901. On that date the solicitor who conducted the defence, and acted throughout the action for the defendants, was under engagement by them at a yearly salary of \$2,500, in consideration of which he was to perform the duties specified in the by-laws regulating and defining the duties of city solicitor. One term of the by-law was, that all costs awarded to the corporation in any suit should be paid to the city treasurer, and a detailed statement thereof rendered in May and December of each year.

On the 10th July, 1902, the by-law was amended so as to provide that all costs payable to the corporation in any suit should be paid to the city solicitor as part of his remuneration in addition to his salary.

On the 23rd July, 1902, the defendants brought in their bill of costs in this action for taxation by the deputy registrar, who, on the production by the plaintiffs of the before mentioned by-laws, ruled that the defendants were not entitled to tax profit costs. Upon appeal from this ruling Street, J., held that the defendants were entitled to the benefit of the amendment of the by-law, which brought the case within the provisions of sec. 320 (3) of the Municipal Act.

The Divisional Court was of the contrary opinion, and also held that upon the terms of the by-law prior to the amendment the case was governed by *Jarvis v. Great Western R. W. Co.*, 8 C. P. 280, and *Stevenson v. City of Kingston*, 31 C. P. 333.

The defendants relied upon *Galloway v. Corporation of London*, L. R. 4 Eq. 90, and *Henderson v. Merthyr Tydfil*, [1900] 1 Q. B. 434.