Boyd, C., held that the articles of agreement as to the custody of the child being put an end to by mutual agreement and delivered up on 17th September, 1903, it was not necessary to deal with the rights of the applicant. The infant has come to the hands of her father, who is willing and able to keep her in a suitable manner, and his right is superior to that of the uncle, whose guardianship has been determined. It is impossible, on the conflicting affidavits, to draw any conclusion as to the welfare of the child. There is not enough evidence to induce any interference, and no such case is suggested as would warrant incurring further expense by a reference to the Master. Having regard to the fact that the child has been left in the hands of the uncle since 11th November, 1897, and has been maintained at his charge without contribution from the father, there should be no costs. Application dismissed without costs.

Boyd, C.   November 9th, 1903.

CHAMBERS.

BASTEDO v. SIMMONS.

Costs —Scale of—Jurisdiction of County Courts—Amount Liquidated or Ascertained.

Appeal by plaintiffs from ruling of one of the taxing officers that plaintiffs were entitled only to costs on the County Court scale and defendants to a set-off of costs. Action for the price of a number of furs sold to defendants. Judgment was given by the trial Judge (Meredith, C.J.) for plaintiffs for $286 (2 O. W. R. 866). The question was whether the amount was ascertained by the act of the parties.

R. McKay, for plaintiffs.

S. B. Woods, for defendants.

Boyd, C.—The cases appear to be in confusion as to the construction and meaning of the words "liquidated or ascertained" in the County Courts Act, R. S. O. ch. 55, sec. 23 (2), and none the less confusing when the cases on the meaning of the like word "ascertained" in the Division Courts Act, R. S. O. ch. 60, sec. 72 (d), are brought into contrast.

The taxing officer, having proceeded upon the exposition of the law as given in Ostrom v. Benjamin, 21 A. R. 467, should not be disturbed in his ruling.