

I have spoken to the Chief Justice (the trial Judge), and he has no doubt of plaintiffs' right to recover full costs of suit in the High Court, and had his attention been directed to it, he would have certified accordingly. This he is willing now to do, nunc pro tunc.

Altogether I see no reason to disturb the scale of taxation, and the appeal is dismissed with costs.

BRITTON, J.

MARCH 3RD, 1903.

TRIAL.

SMITH v. HARKNESS.

Bankruptcy and Insolvency—Assignment for Creditors—Claim to Rank on Estate—Action for Declaration.

Action by H. G. Smith and the firm of Smith & McLennan, of which firm H. G. Smith was senior member, against defendant as assignee for benefit of creditors of J. B. Coulthart, upon an account for services, timber supplied in 1901 and 1902, for payments, indorsations, etc.

D. B. MacLennan, K.C., for plaintiffs.

J. Leitch, K.C., for defendant.

BRITTON, J., gave judgment for plaintiffs for \$3,836.89 and a declaration that plaintiff Smith is entitled to rank upon the estate of J. B. Coulthart for that sum and be paid a dividend thereon, and a declaration that defendant as assignee is entitled to be paid \$1,265.69, and interest. As this was a case in which there was not before action any admission of any specific amount in favour of plaintiffs, and as they were by the notice disputing their claim compelled to bring an action, plaintiffs should get costs, less any costs specially incurred by defendant, if any, in proving the claim for sawing and in resisting the claim for set-off. Plaintiffs to get general costs of action.

STREET, J.

MARCH 3RD, 1903.

TRIAL.

CITY OF TORONTO v. CONSUMERS' GAS CO. OF TORONTO.

Gas Company—Breach of Statutory Duty—Action by Consumers—Accounts—Book-keeping Methods—Reserve Fund—Profit and Loss—Plant and Buildings Renewal Fund.

Action by the corporation of the city of Toronto, suing on their own behalf as well as on behalf of all other consumers of gas furnished by defendants, and by Joseph A. Black,