

method of placing the coal in the tender. . . . Upon the whole I am of the opinion that there was not only some evidence of negligence, but quite enough to justify the inference drawn by Clute, J. See the very similar case of Gulf Colorado and Sant Fe R. Co. v. Wood, 63 S. W. Repr. 164, and Union Pacific R. Co. v. Erickson, 29 L. R. A. 137.

Appeal dismissed with costs.

MOSS, C.J.O., IN CHAMBERS.

SEPTEMBER 20TH, 1909.

SEMI-READY LIMITED v. TEW.

Appeal to Court of Appeal—Leave to Appeal from Order of a Divisional Court—Amount Involved—Costs—Special Circumstances—Leave Refused on Undertaking of Defendant.

Motion by the plaintiffs for leave to appeal from the judgment of a Divisional Court, 19 O. L. R. 227.

George Kerr, for the plaintiffs.

G. M. Clark, for the defendant.

MOSS, C.J.O.:—I delayed disposing of this application at Mr. Kerr's request until I had an opportunity of conferring with the Chancellor, who tried the case.

The plaintiffs ask for leave to appeal from a judgment of a Divisional Court affirming the Chancellor's judgment.

The action is for a declaration that the plaintiffs are entitled to rank under the Assignments and Preferences Act, upon the estate of one Hallman, of which the defendant is the assignee appointed under the Act, for a preferential claim for rent and taxes, amounting in all to \$978.46.

It is not now in dispute that if the plaintiffs were entitled to any sum they were entitled to \$388.76, but, owing to some confusion in the figures, to which the form of the claim filed by the plaintiffs with the defendant contributed, it seems to have been thought at the trial that the proper amount was \$322.10; and the learned Chancellor dismissed the action with costs upon an undertaking that the defendant would allow the plaintiffs to rank on the estate for a preferential lien to that amount.

In the Divisional Court the error seems to have been discovered, but was not rectified by the formal order dismissing the plaintiffs' appeal.