

in cases where the buyer or seller requires that it should be weighed there.

The conviction must be quashed, because it was neither alleged nor proved that the buyer of the coal had required that it should be weighed at one of the public weigh-scales or machines of the corporation.

It was unnecessary to consider the question whether, if the by-law had provided that, in all cases and regardless of any request by buyer or seller, the coal should be weighed upon one of the city weigh-scales, such a provision would be ultra vires.

The appeal should be allowed with costs and the conviction quashed with costs.

*Order accordingly.*

FIRST DIVISIONAL COURT:

DECEMBER 10TH, 1917.

AULT v. GREEN.

*Deed—Conveyance of Land—Action by Execution Creditor of Grantor to Set aside as Fraudulent—Amendment at Trial—Substitution of Claim for Declaration that Conveyance Security to Grantee for Endorsements of Notes—Discretion of Trial Judge—Appeal—Declaratory Judgment—Appeal “as to Costs only”—Unsuccessful Appeal as to other Matters—Judicature Act, sec. 24.*

Appeal by the defendant Green from the judgment of SUTHERLAND, J., 12 O.W.N. 381.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

Taylor McVeity, for the appellant.

C. J. Holman, K.C., for the plaintiff, respondent.

H. Fisher, for the defendant McCormick.

MEREDITH, C.J.O., reading the judgment of the Court, said that the respondent sued as assignee of a judgment creditor of the appellant, having an execution in the hands of the Sheriff of the County of Carleton; and, in the action as originally framed, the plaintiff alleged that a conveyance dated the 1st March, 1913, from the appellant to the defendant McCormick, of certain lands in Ottawa, was fraudulent and void as against the creditors of