

BOYD, C.

MARCH 3RD, 1903.

CHAMBERS.

BALDWIN IRON AND STEEL WORKS (LIMITED) v.
DOMINION CARBIDE CO.

*Costs—Scale of—Jurisdiction of County Court—Recovery of \$550—
Ascertainment of Amount—Promissory Note—Consideration—
Necessity for Extrinsic Proof.*

Appeal by defendants from taxation of plaintiffs' costs by the Local Master at Ottawa. The action was brought to recover \$1,100, being the balance alleged to be due on two promissory notes made by defendants to plaintiffs; and \$162.75 for work done and machinery and supplies sold. The action was tried before MEREDITH, C. J., who gave judgment for plaintiffs for \$550 with interest and costs (ante 6). The Master taxed the costs upon the High Court scale.

J. F. Smellie, Ottawa, for defendants, contended that the amount recovered was within the jurisdiction of a County Court.

R. G. Code, Ottawa, for plaintiffs.

BOYD, C.—The note for \$863 dated 28th March, 1900, was that in respect of which the plaintiffs recovered judgment to the extent of \$550 with interest from 31st December, 1901. The note was for supplies of material prior to its date and running from the end of July, 1899, to the end of February, 1900. While the company defendant existed ostensibly prior to its actual incorporation, still it had no legal status till December, 1899, and it was not an organized company till February, 1900. This note was taken up by the note of McRae (by whom the ostensible company had been carried on prior to the incorporation), and it was at last represented by a note of McRae for \$1,100, which was the total amount sued for by plaintiffs, as being really a company debt, with McRae intervening as surety merely.

The plaintiffs could not recover in this case on the mere proof of the note for \$863; that had gone out of currency, and was represented by the \$1,100 note of McRae, on which proof had been made in McRae's estate. One contention was that this discharged the company.

Again the mere proof of the note did not ascertain the amount, because the consideration therefor was rendered in great part before the company existed, and proof had to be made extrinsic to the note, to give good ground for recovery against the company.