

I think, therefore, that the appeal should be dismissed; the appeal against the order approving the compromise cannot be entertained in its present shape because Messrs. Henderson & Small are not authorized, for the reasons I have given, to appeal on behalf of the debenture holders as a class, and must, therefore, also be dismissed.

As to costs, I think I should not give costs against Messrs. Henderson & Small, because the practice under such an appointment as that upon which they have relied does not appear to have been considered in this Province, and the comprehensive form in which it was made no doubt led to their erroneous belief that a trust to act for the debenture holders was cast upon them without reference to the action of the liquidator. On the other hand, I cannot charge the estate in liquidation, or any part of it, with the payment of their costs, in the view I have taken. The costs of the liquidator should come out of the estate.

FALCONBRIDGE, C.J.

OCTOBER 14TH, 1903.

TRIAL.

MORDEN v. TOWN OF DUNDAS.

*Municipal Corporations—Contract—Supply of Water—Evidence.*

Action for damages for breach of contract as to supply of water and for injury to plaintiff's land.

A. Bell, Hamilton, for plaintiff.

G. Lynch-Staunton, K.C., and H. C. Gwyn, Dundas, for defendants.

FALCONBRIDGE, C.J., gave a written opinion reviewing the evidence and holding that the action was not sustained by it.

Action dismissed with costs.

BRITTON, J.

OCTOBER 16TH, 1903.

CHAMBERS.

RE ATCHESON, ATCHESON v. HUNTER.

*Administration Order—Application for—Status of Applicant—Creditor—Judgment.*

Application by Thomas Atcheson for an order for administration of the estate of John Atcheson.

D. L. McCarthy, for applicant.

C. A. Moss, for W. J. Atcheson, residuary devisee.

H. F. Hunter, Bowmanville, executor, in person.