

made, the Master certifying that in each case counsel had agreed upon the amount. The defendant urged that he was entitled to costs in respect of the part of the action as to which he had been successful; but the learned Judge thought that a fair disposition of the costs would be to award the plaintiffs costs of the action, including the reference and of and incidental to this motion, less a reduction of \$100 by reason of whatever success the defendant had had in the action and on the reference. Judgment for the plaintiffs for the amount found in their favour and interest thereon and costs arrived at as above indicated; and judgment for the defendant for the two items allowed on the counterclaim and interest thereon; the amount to be set off against the amount of the judgment in the plaintiffs' favour. It was urged that the defendant's solicitor was entitled to a lien upon the amount found in favour of the defendant, and that a set-off should not be allowed to the prejudice of such lien. The lien, the learned Judge said, was not one which must be declared as of right, and, in the circumstances, it was not entitled to prevail. A. B. Cunningham, for the plaintiffs. A. J. Russell Snow, K.C., for the defendant.

FALCONBRIDGE, C.J.K.B.

JULY 20TH, 1916.

PRESTOLITE CO. v. LONDON ENGINE SUPPLIES CO.

*Contract—Purchase of Gas-tanks—Out and out Purchase—Filling with Gas other than that Manufactured by Vendors—Action for Injunction—Evidence—Findings of Fact by Trial Judge.]*  
—Action for an injunction restraining the defendants from filling, refilling, charging, or recharging, with acetylene gas, or any other lighting material, any cylinders or tanks with the plaintiffs' label thereon, and for damages and other relief. The action was tried without a jury at London. The learned Chief Justice, in a written judgment, said that the purchasers of these tanks or packages bought them out and out and could do what they liked with them, so long as they did not represent or hold out to the public that they were filled with the gas manufactured by the plaintiffs. For a year before the trial, i.e., many months before the commencement of the action, the defendants had been taking all reasonable precautions to notify the public that the tanks were charged with gas by the Headlight Gas Company, London; and on the 22nd May, 1914, notified the plaintiffs. The statement of claim was not proven, and the action should be dismissed with costs. S. F. Washington, K.C., and J. G. Gauld, K.C., for the plaintiffs. G. S. Gibbons, for the defendants.