

JANUARY 14TH, 1902.

COURT OF APPEAL.

WHIPPLE v. ONTARIO BOX CO.

Jurisdiction—Certificate of Judgment of Court of Appeal—Power to amend after issue—Mistake—Costs.

Where a certificate of the Court was issued setting aside the judgment dismissing the action, and directing judgment to be entered for plaintiff for \$50 damages, and the costs of the action, the Court, upon application, amended the certificate to accord with its intention, to give costs on the High Court scale.

Motion by plaintiff to amend the certificate of this Court issued upon the allowance of the appeal of the plaintiff from the judgment at the trial. The written opinion on the appeal was delivered by LISTER, J.A., setting aside the judgment dismissing the action, and directing judgment to be entered for plaintiff, for \$50 damages, and full costs of the action. The certificate as issued awarded the plaintiff \$50 damages, and the costs of the action. Objection was taken on the taxation of the plaintiff's costs, that the costs should not be taxed on the High Court scale, but as if the action had been brought in a division Court, and this motion was therefore made in Chambers before LISTER, J.A., who referred it to the Court.

A. B. Aylesworth, K.C., for plaintiff.

G. F. Shepley, K.C., for defendants. "Full costs of action" means "costs of the action:" *Irvine v. Reddish*, 5 B. & Al. 786; *Avery v. Wood*, [1891] 3 Chy. 115. The certificate has issued. It is in accordance with the written opinion, and there has not been any mistake. There is, therefore, no jurisdiction to amend.

AYLESWORTH in reply.—The costs of the motion should be to plaintiff: *Hardy v. Pickard*, 12 P. R. 428.

The judgment of the Court (ARMOUR, C.J.O., OSLER, MACLENNAN, LISTER, J.J.A.) was delivered at the conclusion of the argument by ARMOUR, C.J.O., OSLER, J.A., dissenting as to the costs of the motion:—The intention of the Court was to give costs on the High Court scale, including the costs of the interim injunction, and the certificate must be amended to carry out that intention. Costs of the motion to plaintiff.

J. J. Scott, Hamilton, solicitor for plaintiff.

Washington & Beasley, Hamilton, solicitors for defendants.