

KELLY, J., IN CHAMBERS.

JULY 15TH, 1912.

GUNDY v. JOHNSTON.

Summary Judgment—Con. Rule 603—Action by Solicitors for Costs—2 Geo. V. ch. 125, sec. 6—Sum Fixed as Solicitor and Client Costs—Solicitor's Lien—Taxation of Costs—Defence.

Appeal by the defendant from an order of the Local Judge at Chatham, dated the 6th July, 1912, under Con. Rule 603, allowing the plaintiffs to enter summary judgment against the defendant in an action by solicitors to recover sums alleged to be due by the defendant for costs.

Shirley Denison, K.C., for the defendant.
H. S. White, for the plaintiffs.

KELLY, J.:—On the evidence adduced, I do not think summary judgment should have been given in this case. The defendant shewed a reasonable ground for his objection to the claim put forward by the plaintiffs that the \$1,800 directed by sec. 6 of 2 Geo. V. ch. 125 to be paid by the Corporation of the Township of Tilbury East to the defendant, as his costs as between solicitor and client in the litigation therein referred to, was intended to be in payment of the plaintiffs' solicitor and client costs against him in that litigation, and that they are entitled to all of that sum.

The defendant's objection is bona fide and of such a kind that opportunity should have been afforded of disposing of the matter in dispute in the ordinary way, and not on a summary application for judgment.

Then as to the items in the endorsement on the writ of summons, other than the \$1,800 item, the defendant has taken the objection that those items are subject to taxation before judgment being given upon them; and his objection is well taken.

For these and other reasons, the judgment should, in my opinion, be set aside.

It is stated that the township corporation, in whose hands the \$1,800, or part of it, is, have been notified of the solicitors' lien claimed by the plaintiffs, and that the defendant acknowledges such lien to the extent of whatever may be the true amount due by him to the plaintiffs.