

order in council was passed requesting the Governor-General in Council to pass an order directing the road in question to be surveyed by a Dominion Land Surveyor. This was done, but the Surveyor-General in authorizing a surveyor to survey the road directed him to make it 99 feet wide. The survey was made as directed and, in 1900, an order in council was passed at Ottawa approving the survey and transferring to and vesting the road in the Province of Manitoba for the purposes of a public highway.

Held, that there was no authority in the Surveyor-General to make the road of a greater width than it had been or to deprive the defendant of any of his land by giving such directions as he had done. The Dominion Government could not by legislation interfere with private rights, nor would it attempt to do so by order in council, and the approval of the survey by the Dominion Government could not deprive the defendant of any of his land.

Action dismissed with costs.

Appleck and Kemp, for plaintiffs. *Dubuc, A.J.H.*, for defendant.

Phippen, J.A.] ROSENBERG v. TYMCHORAK. [Oct. 13.

Costs—Verdict in King's Bench action for amount within County Court jurisdiction—Statutes affecting procedure apply to pending litigation—Increase of jurisdiction after commencement of action—Certificate for costs on King's Bench scale.

This action was commenced in the King's Bench to recover damages for illegal distress. At the trial the plaintiff got a verdict for \$450 damages. After the commencement of the action and before the trial the jurisdiction of the County Courts in such actions was increased from \$250 to \$500. The plaintiff applied under Rule 933 of the King's Bench Act for a certificate to enable him to tax his costs on the King's Bench scale.

Held, following *Todd v. Union Bank*, 6 M.R. 457, that the statute increasing the jurisdiction was one relating to procedure and applied to pending litigation and, therefore, the plaintiff could not tax King's Bench costs without getting a certificate from the judge under Rule 933, but that, under the circumstances, such certificate should be granted, preventing, also, any set-off of costs by the defendant.

Trueman and Green, for plaintiff. *Manchan and Condé*, for defendant.