

Falconbridge, J., Street, J.]

[Sept. 15.]

TOWNSHIP OF TILBURY WEST v. TOWNSHIP OF ROMNEY.

*Stay of proceedings—Prior action pending—Parties.*

In this action the plaintiffs sought to recover from the defendants a large sum of money, being the portion assessed upon the defendants of the cost of certain drainage works constructed and paid for by the plaintiffs. In a previous action against the same defendants, the plaintiffs therein, who were land-owners in the defendants' township and assessed for a portion of the sum now sued for, sought a declaration that the defendants' by-laws purporting to impose this assessment upon the plaintiffs therein, and all the proceedings upon which they were founded, were void, and for an injunction to restrain any proceedings for the collection of the amount for which the plaintiffs therein were assessed. In that action judgment had been given in the defendants' favor, but the plaintiffs had an appeal to the Supreme Court of Canada pending when the present action was brought.

*Held*, that the present action should not be stayed until after the determination of the appeal in the other.

*Du Vernet*, for plaintiffs. *Aylesworth*, Q.C., for defendants.

Rose, J.]

MURR v. SQUIRE.

[Sept. 17.]

*Costs—Interlocutory order—"Costs in the cause"—Discretion of trial judge.*

The judgment of the trial judge was in favour of the plaintiff, and was not appealed against. As to costs, it adjudged that the defendant should pay to the plaintiff the costs of certain witnesses, and continued: "This Court doth not see fit to interfere with the interlocutory orders disposing of certain costs throughout the action, nor make any further or other order as to costs."

Two interlocutory orders made the costs of applications "costs in the cause;" two made them "costs in the cause to the successful party;" one order provided "that the defendant do pay to the plaintiff the costs of this motion to be taxed in any event of the cause but on the final taxation of the costs herein."

It was conceded that the plaintiff was entitled to the costs made payable in any event.

*Held*, following *Dickerson v. Radcliffe* (decision of Meredith, J., of 30th August, 1900), that the costs made costs in the cause were subject to the disposition of the trial judge, and under the judgment were not to be taxed to the plaintiff.

*Held*, also, that "costs in the cause to the successful party" did not mean more than costs in the cause; and, even if it did, the plaintiff was not a successful party.