

the security increased in case the condition of the railway company should at any time change or appear to make it necessary to do so.

The costs of all parties to this application will be paid out of the funds of the railway company.

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WIGHTMAN v. COFFIN—KELLY, J.—MARCH 14.

*Summary Judgment—Dismissal of Action as Frivolous—Attempt to Re-litigate Questions Disposed of in a Prior Action—Substantial Identity of Causes of Action—Land Titles Act—Caution—Discharge.*]—Motion by the defendants to dismiss the action, on the ground that it was frivolous, vexatious, and an abuse of the process of the Court, inasmuch as it was an attempt to re-litigate questions which had been determined and disposed of in an action by the plaintiffs against the Dominion Nickel Copper Company Limited. The claim in the present action was for a declaration that an agreement of the 28th January, 1911, between the defendants and the plaintiff Wightman was in full force and effect in respect of certain lands described in the endorsement of the writ of summons, and for an injunction restraining the defendants from disposing of or otherwise dealing with these lands to the prejudice of the plaintiffs. The learned Judge said that this same agreement was in issue in the prior action, the claim there made being for an injunction restraining the defendants in that action from operating or trespassing on the lands to which the agreement referred. That action failed, the Court holding: (1) that the agreement was not binding; and (2) that, even if it had been binding, it was put an end to prior to the action. An appeal to the Appellate Division was dismissed and the judgment upheld. In effect the present action is to re-litigate the case disposed of in the former one. The plaintiffs' case rests on the agreement of the 28th January, 1911, and that alone; the question of the right to succeed upon it having been disposed of—and adversely to them—in the former action, they are not at liberty to set up the same case again, and the action should be dismissed with costs: *Macdougall v. Knight*, 25 Q.B.D. 1; *Stephenson v. Garnett*, [1898] 1 Q.B. 677; *Reichel v. Magrath*, 14 App. Cas. 665.—The defendants also asked that a caution filed on behalf of the plaintiffs, against the lands described in the endorsement of the