

FIRST DIVISIONAL COURT.

APRIL 3RD, 1917.

*RE TOWNSHIP OF ASHFIELD AND COUNTY OF HURON.

Costs—Application to County Court Judge under sec. 449 of Municipal Act, R.S.O. 1914 ch. 192—Power to Award Costs—Persona Designata—Judges' Orders Enforcement Act, R.S.O. 1914 ch. 79, sec. 2—Practice—Discretion—Costs of Appeal.

Motion by the township corporation to vary as to costs the terms of the order of this Court of the 7th February, 1917 (11 O.W.N. 369), made on the appeal of the county corporation from an order of the Judge of the County Court of the County of Huron declaring the bridge in question to be a county bridge.

The motion was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

W. Proudfoot, K.C., for the township corporation, contended (1) that neither the Judge of the County Court nor this Court had jurisdiction to award costs in a proceeding under sec. 449 of the Municipal Act; and (2) that, if there was jurisdiction, the case was one in which, in view of the decided cases which supported the view of the Judge below, one of which (counsel said) was overruled by the judgment pronounced by this Court in the present case, the discretion of the Court should be exercised by giving no costs to either party.

W. Lawr, for the county corporation, contra.

The judgment of the Court was read by MEREDITH, C.J.O., who said that the first of Mr. Proudfoot's contentions was not well founded. The County Court Judge was acting as persona designata; and, where he so acts, sec. 2 of the Judges' Orders Enforcement Act, R.S.O. 1914 ch. 79, gives him jurisdiction to award costs; and it was not open to question that this Court had jurisdiction to pronounce the order which the Judge should have pronounced, as well as to deal with the costs of the appeal.

But the question of costs was not argued when the appeal was heard; and, upon further consideration and in view of which had probably been the practice of County Court Judges in dealing with applications under sec. 449 of the Municipal Act, which was said to be not to award costs to either party, the present application should be granted (without costs of it), and neither party should pay or receive costs in respect of the proceedings before the County Court Judge or in respect of the appeal to this Court.