

BOYD, C.

NOVEMBER 9TH, 1903.

CHAMBERS.

RE OLIVER AND BAY OF QUINTE R. W. CO.

Costs—Railway—Expropriation of Land—Abandonment.

Motion by landowner and mortgagee for an order for taxation and payment of costs of proceedings for expropriation, which, the applicants alleged, were abandoned by the company.

A. H. Marsh, K.C., for applicants.

W. E. Middleton, for company.

BOYD, C., held, applying and following *Widder v. Buffalo and Lake Huron R. W. Co.*, 24 U. C. R. 234, that the word "desist" in C. S. C. ch. 66, sec. 11, sub-sec. 6, has the same meaning as "abandon" in 51 Vict. ch. 29, sec. 158, i.e., to leave off or discontinue. Whether voluntarily or compulsorily makes no difference, if the company cease operations to expropriate land and give a new notice as to other operations, that is desistment or abandonment, which involves the company in paying costs to the landowner.

Order made referring the costs for taxation to a taxing officer. Costs of application to be paid by company.

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CHAMBERS.

TAYLOR v. TAYLOR.

Writ of Summons—Substituted Service—Motion by Person Served to Set aside—Status of Applicant—Solicitor—Communication with Defendant—Notice—Inference—Costs.

Appeal by a solicitor who was served by substitution for defendant with the writ of summons, from order of Master in Chambers (ante 921) dismissing the appellant's application to set aside the order for substitutional service and the service upon the appellant, upon the ground that appellant had no status to apply.

W. J. Elliott, for appellant.

H. D. Gamble, for plaintiff.

BOYD, C.—In this case the solicitor might have contented himself with sending back the copy of writ served and calling