

KELLY, J., IN CHAMBERS. MARCH 26TH, 1914.

ANDERSON v. GRAND TRUNK R.W. CO.

*Costs—Summary Disposition of Costs of Action Rendered Unnecessary by other Proceedings—Rule as to Costs—Person in the Wrong to Answer.*

Motion by the plaintiff for an order for payment by the defendants of the costs of the action.

Grayson Smith, for the plaintiff.

D. O'Connell, for the defendants.

KELLY, J.:—On the 5th September, 1911, the defendants the railway company obtained ex parte an order of the Dominion Railway Board authorising them to construct a siding into the lands of their co-defendants; this siding leading across a lane on which the plaintiff's lands abutted. The material on which the order was granted did not disclose the existence on the registered plan of this lane.

On the 19th September, the plaintiff, being then ignorant of the issue of the Railway Board's order, commenced this action and obtained, and served upon the defendants, an interim injunction order restraining them from constructing the siding on the lane. In defiance of the injunction order, the railway company proceeded, on the 20th September, to lay down the siding on the lane, and that work was practically completed at the time of the return of the motion to continue the injunction.

The plaintiff afterwards became aware of the order of the Railway Board, and such proceedings were then had before that Board as resulted in their making an order on the 12th October, 1911, amending the order of the 5th September, so as to declare the owners of certain lots (including the plaintiff's lands) to be "adjacent land-owners," within the meaning of sec. 6 of 1 Geo. V. ch. 22, amending sec. 235 of the Dominion Railway Act.

The plaintiff's rights were then dealt with by the Board; and, the object of this action having been thus substantially attained, there existed no reason for proceeding further with it, though when it was commenced the circumstances justified it.

The present motion is not in respect of costs of an action in which there is an ordinary discontinuance, but of one wherein further proceedings became unnecessary owing to the plaintiff