

dated actions, and if defendants desired, they could put in further evidence with reference to the matter of the amendments which plaintiffs could answer, if desired. Thereupon written arguments were put in by counsel for and against the application for consolidation.

No intimation being given to me in the argument of counsel for defendants that if the order for consolidation were made further evidence would be offered, I assumed that it was not intended to offer any. I made no further or formal direction "That the defendants be at liberty, if they so elected, to tender further evidence in the consolidated action in support of their defence," and the defendants did not formally elect "not to tender further evidence."

I accordingly proceeded to dispose of the matters and handed out my written judgment on or about the 2nd January, 1912. Shortly after doing so I was applied to on the part of the plaintiff for an appointment to consider and determine the question of whether interest should or should not be allowed on the judgment. I intimated to counsel that I would not be disposed to allow such interest, and he thereupon stated that an appointment would not be necessary. A formal judgment was thereafter settled and signed on the 17th January, 1912.

The matter was not again called to my attention until a few days ago when the defendants asked for and obtained from me an appointment for the purpose of making an application to strike out of the formal judgment as settled, the following words appearing therein: "This Court having been pleased to further direct that the defendants be at liberty, if they so elect, to tender further evidence in the consolidated action in support of their defence, and the defendants having elected not to tender further evidence."

Upon the application I was informed that meantime an appeal from my judgment had been taken to the Court of Appeal, proceeded with and argued, and judgment in connection therewith is pending.

Under these circumstances I do not think I should now make any order.