

## SPENCER v. JOHNS.

Opinion delivered November 18, 1929.

1. COSTS—DISCRETION IN EQUITY.—Courts of equity have a wide discretion in the matter of taxing costs against litigants, and the Supreme Court will not reverse unless it is shown that the court abused its discretion or acted arbitrarily.
2. COSTS—DISCRETION IN EQUITY.—Where defendants were temporarily enjoined from closing a public road, whereupon they granted a right-of-way across their lands, and plaintiffs agreed to dismiss the suit, each party to pay half the costs, but before dismissal was entered defendants constructed a fence across the road, but, on a hearing for contempt, it was shown that, between the filing of the information and the hearing, defendants had widened the road and had ceased to be in contempt, an order requiring each party to pay his own costs *held* not an abuse of discretion.

Appeal from Crawford Chancery Court; *J. V. Bourland*, Chancellor; affirmed.

*E. D. Chastain*, for appellants.

*Dave Partain* and *C. M. Wofford*, for appellees.

McHANEY, J. This is an appeal from an order of the chancery court requiring each party to pay his own costs in this litigation.

It appears that appellants were about to close a public road, and, on petition of appellees, they were temporarily enjoined from so doing. An agreement was entered into by appellants granting a thirty foot right-of-way across their lands, and appellees agreed to dismiss that suit, each party to pay half the costs. Before a dismissal was actually entered, appellants built a fence up the center of the road. Thereupon appellees filed an information for contempt. A temporary restraining order

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was issued. There was a hearing before the chancellor, and it developed that, between the time of the filing of the information and the hearing, appellants had widened the road, and were not in contempt of court. On motion to tax the costs, the court entered an order requiring each party to pay his own costs.

As appellants admit, courts of equity have a wide discretion in the matter of taxing costs against litigants, and this court will not reverse unless it be shown that the court has abused its discretion or acted arbitrarily. We are unable to say from the record presented that there has been a sufficient showing made to justify us in setting aside the action of the court in taxing the costs to each of the parties which they had incurred.

Affirmed.

