

JOSEPH RIOUX.....CLAIMANT;

1889

AND

Oct. 24.

HER MAJESTY THE QUEEN.....RESPONDENT.

Rule of court respecting claims pending before Official Arbitrators when The Exchequer Court Act came into force—Report by two of the Arbitrators where claim referred to them generally—Practice.

By a rule of court made on March 7th, 1888, it was ordered that, unless it was otherwise specially ordered, any matter pending before the Official Arbitrators when *The Exchequer Court Act* (50-51 Vic. c. 16) came into force that had been heard or partly heard by such Arbitrators should be continued before them as Official Referees, and that their report thereon should be made to the court in like manner as if such matter had been referred to them by the court under the 26th section of the said Act: Prior to the making of this rule a claim had been referred by the Minister of Railways and Canals to the Official Arbitrators for investigation and award. This claim, however, was proceeded with and heard before two of such Arbitrators only, and a report thereon in favor of the claimant was made by them to the court. On motion by claimant for judgment on such report,—

Held:—That the hearing of the claim by two of the Official Arbitrators was not a hearing within the meaning of the rule, and that judgment could not be entered on the report.

MOTION for judgment to confirm a report of two Official Referees of the court.

May 27th, 1889.

Belcourt in support of motion ;

Hogg contra.

BURBIDGE, J., now (October 24th, 1889) delivered judgment.

This is a motion for judgment for the claimant for six hundred dollars on a report, dated the 7th day of April, 1888, made by Messrs. Compton and Simard, two of the Official Referees of this court.

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It appears that this claim and that of one François Drapeau had, prior to the coming into force of the Act 50-51 Vic. c. 16, been referred by the Minister of Railways and Canals to the Official Arbitrators for investigation and award, and that such claim had, on the 9th of July, 1886, been proceeded with and heard before Messrs. Compton and Simard, two of the four Official Arbitrators, but that no award had been made in the matter.

By the 59th section of 50-51 Vic. c. 16, it was provided that all matters pending before the Official Arbitrators when such Act came into force should be transferred to the Exchequer Court, and might therein be continued to a final decision in like manner as if the same had, in the first instance, been referred to the court under the said Act.

By a general rule of the court made on March 7th, 1888, it was ordered that unless it was otherwise specially ordered any matter pending before the Official Arbitrators when the said Act came into force, that had been heard or partly heard by such Arbitrators, should be continued before them as Official Referees, and that their report thereon should be made to the court in like manner as if such matter had been by the court referred to them under the 26th section of the said Act.

The report on which the claimant moves for judgment purports to be made in pursuance of this rule.

It is objected, however, on the part of the Crown that the case is not within the rule, as the matter is not one that had been heard or partly heard before the Official Arbitrators, since two only of them acted in the matter.

It is conceded that the claim could have been prosecuted before three of the four Official Arbitrators, and that in such a case two could have made an award (1);

(1) R.S.C. c. 1 s. 7 (42).

but it is contended that the proceedings having taken place before the two Arbitrators only it was not a hearing by the Official Arbitrators, and that no judgment can be entered on the report.

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I am of opinion that the objection is well taken.

Reasons
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 Judgment.

Motion dismissed, without costs.

Solicitors for claimant: *Belcourt & MacCracken.*

Solicitors for respondent: *O'Connor, Hogg & Balder-
 son.*