

R. S. O. 1897 ch. 62. The original award was dated 9th December, 1903, and upon a motion to set it aside an order was made by Meredith, C.J., on 22nd June, 1904, remitting the award to the arbitrator "for the purpose of finding and making his award as to the ownership of the property which was included in the instrument of 5th January, 1901, and which entered into the figures which the arbitrator has set out in the award, and which form the amount found due from the company to Powell and Mitchell;" and directing such further award to be made on or before 1st August, 1904.

Pursuant to this order the arbitrator, on 16th July, 1904, amended and re-executed the award, the amendment being as follows: "3 (a). I further award and determine that the goods, chattels, and property referred to and included in the document dated 5th January, 1901, before mentioned, be hereby vested in the Lake Superior Power Company as the owner thereof."

On 15th July, 1904, counsel for the company, pursuant to notice and in presence of counsel for Powell and Mitchell, applied to the arbitrator to state in the form of a special case for the opinion of the Court certain questions of law which had arisen during the reference, but this the arbitrator refused to do, whereupon counsel for the company requested the arbitrator to delay making his award until the company could apply to the Court for a direction to him to state such case, but this the arbitrator also refused to do, and intimated that he would proceed on the following day to make his award.

On the following day, 16th July, counsel for the company again appeared before the arbitrator and served him with a copy of a notice of motion to the Court for a direction to state a case, and again requested the arbitrator to delay making his award till the application had been heard, and again the arbitrator refused to grant the delay, and proceeded to make and execute the amended award.

From the best consideration I have been able to give the material filed on this application, I am of opinion that the application made by the company to the arbitrator was bona fide and reasonable, and was not frivolous or made for the purpose of delay only, and that a reasonable time should have been given to enable the company to have their application to the Court for a direction to state a special case disposed of by the Court.

When the motion did come before the Court, it was dismissed, on the ground, as stated in the argument, that after an award is actually executed an order will not be made directing the arbitrator to state a special case.