

and locomotive repair plant at Moncton, N.B., and was subject to the orders of the Government engineer. By order of the engineer and with no contract in writing therefor, he constructed sewers and a water system in connection with said works, and on completion of his contract the Crown accepted the additional work and agreed to pay its fair value, but not the amount claimed, which was deemed excessive. The Department of Railways referred the claim to the Exchequer Court and, by consent, it was referred to the Registrar of the Court to have the damages assessed, the order of reference providing that "the amount to be ascertained shall be the fair value or price thereof allowed on a quantum meruit." The registrar fixed the amount at \$53,205, as the fair value of the work reasonably executed on a somewhat different plan. The judge of the Exchequer Court added \$39,000 to this amount, holding that the Crown had admitted the authority of the engineer to order the work to be done, and that W. was entitled to the actual cost plus a percentage for profit. On appeal by the Crown,

Held, Anglin, J., dissenting, that the judgment appealed against was not warranted; that the Crown had not admitted the authority of the engineer, but expressly denied it by pleadings and otherwise; that all W. was entitled to be paid was the fair value of the work to the Crown, and the amount allowed by the referee substantially represented such value. Appeal allowed with costs.

Tilley and Friel, for appellant. *W. Nesbitt, K.C.*, and *Harold Fisher*, for respondent.

EXCHEQUER COURT.

Cassels, J.]

[Feb. 28.

BROWN, LOVE & AYLMER v. THE KING.

Public Work — Trent Canal — Contract — Claims thereunder — Meaning of word "claim" — Waiver — Validity — Reference of questions of quantities and prices.

Held, 1. That the word "claim" as used in s. 38 of the Exchequer Court Act, R.S. 1906, c. 140, must be construed to mean a cause of action.

2. That, upon a construction of s. 48 of the Exchequer Court Act, a waiver by the Crown of stipulations in a contract respecting (a) the fixing of rates and prices by the engineer; (b)