

Meredith, C. J.]

[July 17.

RE GRAND TRUNK RAILWAY AND PETRIE.

*Arbitration—Time for statement of case by arbitrators—Remitting back to arbitrators for re-consideration—R.S.O. (1897) c. 62, ss. 11 and 41.*

After an award is made it is too late to make an application for an order under s. 41 of the Arbitration Act, R.S.O. (1897) c. 62, directing the arbitrators to state a case for the opinion of the Court as to the admissibility and relevancy of evidence or for the arbitrators to state a case for the opinion of the Court.

The only cases in which the Court will remit matters referred to an arbitrator for re-consideration under s. 11 are: (1) Where the award is bad on the face of it. (2) Where there has been misconduct on the part of the arbitrator. (3) Where there has been an admitted mistake and the arbitrator himself asks that the matter may be remitted; and (4) When additional evidence has been discovered after the making of the award: and where certain arbitrators had received and given effect to certain evidence in their award after the making of the award gave a certificate to that effect and that they were in doubt as to whether they should have received the evidence.

*Held*, that this case did not come within any of the above four cases and that an order to remit the matter back to the arbitrators should be secured.

*W. R. Riddell*, K.C., for the application. *Walter Cassels*, K.C., contra.

Meredith, C.J., MacMahon, J., Lount. J.]

[July 20.

REX v. YOUNG.

*Criminal proceedings—Suspended sentence—Estreating recognizance—Criminal Code s. 971—Locus standi.*

The defendant was in 1887 convicted for libel and released from custody upon entering into a recognizance with sureties to appear and receive judgment when called upon. The private prosecutor now moved absolute an order nisi calling on him to shew cause why he should not be ordered to appear at the next sittings of the Assizes to receive judgment on the ground that he had failed to be of good behaviour since entering into the said recognizance, by reason of his having published further libels.

*Held*, that it is only upon motion of the Crown in such cases that the recognizance of the defendant and his bail is estreated, or judgment moved against the offender.

*Held*, also, that apart from this, under the circumstances, the prosecutor must be left to his remedy by action or indictment against the defendant in regard to the libels complained of.

*Aylesworth*, K.C., for the motion. *Johnston*, K.C., for defendant.