aside, on the grounds, 1st,—That it was uncertain and not final, and did not pursue the submission in this, that by the lease Fowler was to pay a compensation for running one or more trains, and the arbitrator did not determine the compensation for running one train, but for running four, and it was not certain whether he meant four trains back and forward, or two trains each way, and he was to fix the maximum number of trains, and he did not do so, but gave a discretion to Fowler to run any number of trains, paying a certain rate per day for each train over four; that the arbitrator had nothing to do with the working of the Railway, and exceeded his authority in awarding as to the use of sidings, &c., or why the award should not be remitted back to the arbitrator for reconsideration, &c, &c.

Cameron, Q. C., and *Galt*, Q. C., shewed cause.

I do not consider that anything turns on the affidavits filed It is necessary to read together all parts of the lease bearing bearing upon Fowler's use of the Company's line to understand clearly the matter really submitted. As I understand the case, judging wholly from the lease, submission and award it appears to be this: Fowler gets a lease at a nominal rent of the Company's corporate rights for a long period, and contracts to make a line of road from Peterborough to intersect the Company's road at Millbrook, and to make such portion for his profit, he being, in fact, proprietor for the time of that portion He bargains with them to run at least one train each way daily, between Peterborough and Port Hope. In doing so he would use, of course, that part of the Company's line between Millbrook and Port Hope; to make his portion profitable he would naturally require to use their portion in connexion therewith, and they would naturally expect payment for such use of their portion. He therefore agrees to pay them a rent or compensation for the use or right of running one or more through trains from Peterborough to Port Hope, and *vice versa*, such rent to be ascertained as thereinafter provided.

So far we can understand their position.

He is bound to run at least one train each way daily, and it is to be ascertained what he is to pay therefor; and it is also contemplated to ascertain what he is to pay for running more than one train each way—as he may naturally desire to run more if business requires. In a subsequent part of the lease it is expressly declared that he is to have the right to run through trains between Port Hope and Millbrook, on paying a rent therefor, to be fixed by arbitration, the arbitrators fixing the maximum daily number of trains.

There were therefore two things to be ascertained—1st, The amount which Fowler should pay merely for doing what his contract compelled him to do, viz.: the running of at least one train each way daily. It is obvious that he might not desire to run more, and it might be a loss instead of a profit to do more. 2nd, If he desired to avail himself of the right conferred by his lease of running any greater number of trains, then the arbitrator is to fix the maximum of trains and the rent or compensation to be paid therefor. It appears to me that it is one thing to determine the rent to be paid by Fowler for what he is bound to do under his contract, and another thing, the amount to be paid should he avail himself of the privilege allowed him of doing more.

Mr Shanley in his award assesses $15,000 as the annual compensation to be paid by Fowler under his lease, without saying for what it is to be paid. He proceeds then to award that the maximum number of trains to be run by Fowler, in consideration of such payment on the Company's line from Port Hope to Millbrook, or *vice versa*, shall not exceed four each day. He further gives him the right of putting on extra trains on giving a certain notice and paying $20 daily for each extra train.

As I read the award the right to run four trains is expressly in consideration of the $15,000; it seems conceded in argument, and is in accordance with common sense, that the wear and tear of a railroad is naturally in proportion to the amount of work, and that two trains each day would not do the same injury that four trains would; I think it just to assume that the arbitrator so understood it and considered the $15,000 at the proper rent for the right of running any number up to four trains. I think the Lessee, Fowler, has the right to have it clearly stated what is the amount of rent that he must pay for running the number of trains which under his contract he is bound to run, and which number he may not desire to exceed.

I think the award must be referred back to the arbitrator for reconsideration on this head. I do not consider the other objections important The time for making the award stands enlarged until 1st day of next year, with power to referee to enlarge again.

Order granted.

McINNES v. MACKLIN.

Orders for Ca Sa—Application to discharge same—Induction to defraud—Practice.

Quære—When one judge on a statement of facts has granted an order for a Ca Sa to issue, can another Judge taking a different view of the same facts, interfere in the matter without any new matter being shown?

The question whether any debt is due or not will be entertained on an application to discharge an order for a Ca Sa, but unless a very case is made out the court or judge will not interfere.

The affidavit in support of an application for an order to hold to bail should state the name of the parties informant, but if it shew facts sufficient to satisfy the mind of the judge, this is sufficient, it need not copy the words of the statute.

(September 3rd, 1859.)

The defendant had been arrested on a *Ca Sa* issued on the order of Mr. Justice Burns, under 22 Vic., cap. 96.

The affidavit of plaintiff stated that defendant was indebted in two hundred and twenty-four pounds, eighteen shillings and three pence on a judgment. That five days before the day of affidavit, defendant informed plaintiff that it was his intention to leave Upper Canada and to go to the Red River settlement by the way of Lake Superior, and that he did not intend to be absent from Canada for a longer period than six months. That on the same day plaintiff was informed and believed that defendant did not intend to go to the Red River settlement, but intended to go to New Caledonia by way of New York. That the informant told plaintiff he had seen a letter from defendant to a person in New York inquiring for a ship sailing to the Isthmus of Panama and that he believed defendant would sail in the ship "Star of the West" from New York to the Isthmus of Panama, on the twentieth day of the month of June. That plaintiff believed that defendant intended immediately to leave Upper Canada with intent to defraud, and that the informant declined making an affidavit of the facts. That plaintiff believed defendant made the statement as to the Red River to deceive and mislead his creditors, and that he had no intention of returning to Upper Canada.

On the ninth of July Defendant obtained a summons from the Chief Justice of Upper Canada, to shew cause why he should not be discharged from custody and the Bail Bond be cancelled on the ground that the affidavit on which the order had been obtained did not disclose the name of the party from whom the plaintiff received the information, that defendant was going to New Caledonia and on grounds disclosed in affidavits and papers filed.

Defendant supported his application by his own affidavit setting forth an account of his dealings with the plaintiff, that on 9th June he had assigned certain collateral securities to his creditors for their claims that they were not all unpaid, that it was true he was about starting for British Columbia, *via* New York and the Isthmus of Panama, but that his absence was to be only six months, that he was certainly to return within that time, that he was leaving his wife and family behind, that it was publicly known that he was so going away, that he had at first spoken of going by the way of the Red River settlement, by the overland route, and strongly denying all fraudulent designs.

Several other affidavits were filed corroborating these statements. The plaintiff filed numerous affidavits in reply.

The summons was enlarged from time to time, and was argued on the twenty ninth August. The defendant produced further affidavits in answer to those of the plaintiff, and both sides exhibited great industry in producing counter affidavits each eliciting some new matter and answered by the other side. This was done by the consent of the parties, and resulted in producing in all thirty six affidavits, several deponents from time to time producing two or three answering and rebutting charges.

Freeland for defendant, *Sadlier* for plaintiff.