

difficulty I have in the case arises from the fact that the pursuer seems to have been willing to clean the gig on the Saturday night, so as to obviate the necessity for Sunday work, but with reference to this, the principle which I have above alluded to comes in. The master must be the ultimate judge in such a matter. It is inherent in the relation of master and servant that the will and opinions of the one must yield to those of the other, except when the order is plainly illegal." The judgment was given, therefore, in favor of the master.

### NOTES OF CASES.

#### JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

February 14, 1880.

Present:—Sir JAMES W. COLVILLE, Sir BARNES PEACOCK, Sir MONTAGUE E. SMITH, Sir ROBERT P. COLLIER.

BOURGOIN et al., Appellants, and LA COMPAGNIE DU CHEMIN DE FER DE MONTRÉAL, OTTAWA & OCCIDENTAL, and ROSS, Respondents.

*Award under Railway Act, 1868—Must consist in a fixed sum.*

The appeal was from the judgment of the Court of Queen's Bench. 2 Legal News, p. 131, 23 L. C. J., p. 96.

PER CURIAM. The only question which has been fully argued upon the four appeals consolidated in this record is whether the judgment of the Court of Queen's Bench rendered in the first suit, No. 693, was right in annulling and setting aside the award of the 28th of July, 1876, upon either of the grounds stated in it. As to one of those grounds which proceeds upon the assumption that the lump sum of \$35,013, awarded to the Appellants, included the whole value of the land, and not merely the value of their interest as lessees, it is not necessary to say anything, because that objection has not been pressed.

The question, therefore, is reduced to this: can the judgment be supported on the other ground taken? Their Lordships confined the argument, in the first instance, to that question, because they thought that if the award was found to be invalid on the face of it, that finding would go far to dispose of all or most of the

questions which have been litigated between the parties. They will, therefore, for the present, confine their attention to the first of the suits and the final judgment therein, nor will they go into the facts further than is required in order to elucidate the single point to be now determined. The Appellants are four persons holding a quarry, as lessees, under a Mrs. Smith. They are sometimes described as working together in two partnerships of two each, as "Bourgoin et Fils" and "Bourgoin et Lamontagne," but for all practical purposes they may be treated as the four joint lessees of the quarry. The Respondents, who were the Plaintiffs in the suit, are a Railway Company, styled on the record "The Montreal, Ottawa and Western Railway Company." This Company was incorporated originally under another title, viz., "The Montreal Northern Colonization Railway Company," by an Act of the Legislature of the Province of Quebec (32 Vict., c. 55), and was governed by that and a subsequent statute of the same Legislature, 34 Vict., c. 23. It was, therefore, in its inception a provincial railway. In 1873, however, the Parliament of Canada, by Act 36 Vict., c. 82, declared this railway to be a federal enterprise, and by a subsequent statute (38 Vict., c. 68) changed the name of the Company to that which it bears on this record. Hence, when the proceedings which resulted in the award in question were commenced, the railway had become a federal railway, and the Respondent Company was subject to and governed by the provisions of the Canadian statute known as "The Railway Act, 1868."

It appears that, in one or other of the above two states of existence, this Company had proceeded in the usual way to ascertain the compensation payable to the lessor, Mrs. Smith, in respect of her freehold interest in the land to be expropriated. The Appellants intervened, and sought to have the sum payable to them for compensation in respect of their interest as lessees ascertained by the same proceeding. The Company declined to accede to this, and having settled the amount of compensation payable to Mrs. Smith, took possession of the quarry. The Appellants upon that instituted certain proceedings, in order to compel the Company to ascertain the compensation due to them; those proceedings were ultimately successful, and thereupon the Company gave the