

J. A. Soule, for the railway company.

J. C. Payne, for the executors of Lachlan Campbell and for Josephine McCallum and Georgina McCallum.

MASTEN, J., in a written judgment, said that the trustees of the estate of Thomas C. Street, deceased, who were interested in the lands, were not represented. No notice of this motion had been served upon them, though notice of expropriation had been given to them by advertisement pursuant to the order of Britton, J., dated the 3rd December, 1918.

Application was now made to dispense with publication of notice of this application on the Street trustees, pursuant to sub-sec. 3 of sec. 196 of the Railway Act.

Having regard to the circumstances disclosed, the learned Judge thought he should exercise his discretion by dispensing with the publication of notice so far as the present application was concerned, but the dispensing with such notice should have no bearing upon the question of proper notice being given to all parties of the sittings of the arbitrators.

The applicants, relying upon the decision in *Re Toronto Hamilton and Buffalo R.W. Co. and Burke* (1896), 27 O.R. 690, asked for the appointment of a single arbitrator. Since that case was decided in 1896, the statute had been amended by inserting, at the end of sub-sec. 1 of sec. 196, a clause providing that the Judge shall, at the request of either party on such application, appoint three arbitrators to determine such compensation, one of whom may be named by each party on such application.

In view of this amendment, the learned Judge said, he would accede to the contention of the executors and trustees and appoint three arbitrators to determine the compensation.

The parties did not, on the application, name the arbitrators whom they chose, and, if necessary, the matter might be further mentioned for this purpose.

Costs of the application should be costs in the arbitration proceedings.

CLUTE, J.

FEBRUARY 14TH, 1919.

*RE WILKITES.

Infant—Custody—Contest between Parents as to Custody of Child of 11 Years—Infants Act, R.S.O. 1914 ch. 153, sec. 2—Interests of Infant—Misconduct of Father—Custody Awarded to Mother.

Upon the application of Sylvester Wilkites, the father of the infant Vitalia Wilkites, for the delivery to him by his wife, Antonia