

The respondent Skelton now moved for an order dismissing the relator's motion as against him, with costs.

T. N. Phelan, for the motion.

E. Meek, K.C., contra.

THE MASTER:—No affidavit is filed in answer, but Mr. Meek states that the relator died shortly after the issue of the order of the 13th February.

Assuming that this is so, the proceeding would seem to be at an end, as it could not be revived, nor could any new proceedings be taken after the lapse of six weeks from the election.

So far as I can ascertain, the case is one of first impression in this respect.

It was argued by Mr. Meek that, as the costs of Woods had been taxed, and the same solicitors and counsel acted for both respondents, there could be no further costs. But this is a question to be determined on the taxation.

The respondent Skelton is entitled to the order asked for and also to have all necessary assistance in seeking to recover any costs he may be held entitled to.

But for that purpose or for the recovery of costs by Woods, the production, at a trial, of the recognizance will be sufficient. There is no need of handing it out at present, nor (if at all) until the respondents are obliged to sue.

The order will go dismissing the proceedings with costs against the relator, payable forthwith after taxation.

MYLES V. GRAND TRUNK R.W. CO.—MASTER IN CHAMBERS—
OCT. 31.

Evidence—Appeal from Award—Examination of Arbitrator—Necessity for Leave of Court—Appointment Set aside—Practice.—Motion by the plaintiff to set aside as irregular an appointment issued by the defendants for the examination of an arbitrator for use as evidence in a pending appeal in the action from the award of three arbitrators. There was an arbitration under the Railway Act, as well as an action, and the assessment of damages in the action was referred at the trial to the arbitrators. The Master referred to *In re Cavanagh and Canada Atlantic R.W. Co.*, 14 O.L.R. 523, and *Trethewey v. Trethewey*, 10 O.W.R. 893; and said that the appointment must be set aside,