

KING'S BENCH.

Mathers, C.J.]

[August 11.]

IN RE BLACKWOOD AND C. N. R. CO.

Railway — Arbitration — Costs — Taxation — Fees of arbitrator who resigned pending the arbitration.

Application by the railway company under s. 199 of the Railway Act, R.S.C. 1906, c. 37, to have its costs of an arbitration to determine the amount of compensation to be paid for land taken taxed by the judge, the board of arbitrators having awarded only the sum previously offered by the company. Mr. Johnson, one of the arbitrators first appointed, resigned before the award was made and a new arbitrator was appointed in his stead. The owner took up the award, paying the fees of all the arbitrators but Mr. Johnson, who came in on this application and asked that his fees be paid.

Held, that he could have no relief on this application, but must be left to his remedy, if any, against the owner by action.

In taxing the costs of the arbitration under the statute, the judge acts ministerially and cannot decide anything as to the right to costs.

Ontario & Quebec Ry. v. Philbrick, 5 O.R. 674, 12 S.C.R. 288, followed.

Clark, K.C., for the Railway Co. *G. A. Elliott*, for Blackwood. *Hough, K.C.*, for Johnson.

Prendergast, J.]

THORDARSON v. AKIN.

[August 15.]

Survey of land — New survey — Errors in survey.

When, upon a new survey of a block of lots giving only the the family for the crimes of his children, the correlative power which the family head had over the children even to deprive them outlines, it is determined that there is a small excess in the length of the block over the dimensions shewn in the original subdivision survey, there is no principle of law requiring that such excess should in all cases be distributed over the whole length of the block so as to increase the width and change the true boundaries of every lot; but, if the case requires that such excess should be distributed or located at all, it may, according to circum-