

Expropriation—Railway—Arbitration — Arbitrator rendering additional services to party.

Held, The fact that a person who has acted as arbitrator in behalf of the landowner, has been paid by the company the amount taxed as fees for his services as arbitrator, does not preclude him from recovering from the party appointing him the value of additional services rendered to such party in connection with the same arbitration, but outside of the ordinary duties of an arbitrator, such as interviews, consultations, etc.—*Evans & Darling, Tessier, Cross, Baby, Church, Bossé, J.J.*, Nov. 20, 1889.

Trustees—South Eastern Railway Company—43-44 Vict. (Q.), ch. 49—Supplies furnished to company before trustees took possession.

By the Act 43-44 Vict. (Q.), ch. 49, the South Eastern Railway Company were authorized to issue mortgage bonds to a certain amount, and to convey the railway franchise rights and interest to trustees, representing the bondholders. The trustees were empowered to take possession of the road in the event of default by the company to pay the bonds or interest thereon for 90 days. It was also provided (by sect. 10) that neither the company nor the trustees should have power to cease running any portion of the road. The respondent furnished supplies necessary for operating the road, after the execution of a trust deed in conformity with the statute above mentioned, but before the trustees took possession of the road for default by the company to pay interest on the bonds. The respondent first sued the company for the amount of his claim, and obtained judgment, and then brought the present action for the same causes against the trustees.

Held, (Reversing the judgment of Jetté, J., M. L. R., 3 S. C. 238), That the effect of the Act above mentioned, and of the deed executed in conformity thereto, was not to convey the possession of the road to the trustees from the date of such deed, so as to constitute them pledgees; and the trustees were not liable even for supplies necessary for operating the road, furnished before the time they assumed possession.

2. That although the supplies for which

payment was claimed in this case, were furnished at a time when the railway company was in default to pay interest on bonds, and when the trustees might have taken possession under the terms of the Act, but neglected to do so, the company was not thereby constituted *negotiorum gestor* of the trustees, so as to render the latter liable for supplies necessary for the operation of the road, obtained by the company before the trustees took possession.—*Farwell & Walbridge, Tessier, Cross, Church, Bossé, Doherty, J.J.*, (Tessier, J., diss.), May 28, 1889.

CIRCUIT COURT.

MONTREAL, May 12, 1890.

Before BELANGER, J.

JOHNSTON v. COFFIN.

Lessor and Lessee—Delay for summons—One nonjuridical day sufficient.

A writ of ejectment was served on Saturday, returnable on Monday.

The defendant, by an exception to the form, pleaded that the delay was insufficient, that one juridical day should intervene between the day of service and day of return, and referred to *Darby v. Bombardier*, 2 Leg. News, p. 202, and *Metayer dit St. Onge v. Larichelière*, 21 L. C. J. p. 27.

The plaintiff cited arts. 75, 89 and 24 C. C. P., and *Boulerisse v. Hebert*, 2 Leg. News, p. 196, and *Preston v. Paxton*, 23 L. C. J. p. 210, *Gates v. Stewart*, 23 L. C. J. 62; *Crebassé v. Ethier*, 2 R. L. 332.

BELANGER, J., said that he could not decide otherwise in this case than he had already decided in *Boulerisse v. Hebert*, 2 Leg. News, 196, cited by the plaintiff, and since the rendering of the judgment, the Courts had adopted that ruling. The Code of Procedure did not require that the intermediate day be juridical. The case cited as to the sufficiency of the delay should be followed.

Exception à la forme dismissed.

W. S. Walker, for plaintiff.

Busted & Lane, for defendant.