

The Government of Quebec could not control the resignation of its Arbitrator. There was no coercive power which could be invoked to compel him to discharge the duty. A variety of personal motives may have made his resignation convenient or necessary to himself. If he would not act, the Government was powerless; and its acceptance of his resignation, and the *supersedeas* following it, were a necessary preparation for naming another Arbitrator. Or if the revocation of authority had come from the Government to its Arbitrator in the first instance, it would not change the legal aspect of the matter. The incapacity or ill-health of the Arbitrator, or his absence from the country, or a variety of other causes, might have rendered a revocation necessary. These questions the two Arbitrators had no right to investigate. A vacancy arose, and that alone dismembered the tribunal, and put an end to their authority to proceed. During the dismemberment and until a new appointment, the parties were clearly *coram non judice*.

As to the doctrine of the Courts in relation to this whole question, I am persuaded that no rule can be found under any system of law which reaches the point of countenancing the action of the two Arbitrators. No Court has ever said that where a power to judge is by precise terms vested in *three*, it is by construction so vested in *two*, that these alone might exercise it when there is no third; or in other words, that a jurisdiction might be exercised when in fact the body to which the law has entrusted it no longer exists. It is clear from the tenor of all the citations, whether from the Civil or the English Law, not only that the tribunal must be complete, but also that all the persons seized of the jurisdiction, must in the absence of special provision to the contrary, hear the case; and as an almost invariable rule be present at the judgment. As before stated, not a word is to be found in either of these systems of law, nor yet in the American books, (which introduce no new doctrine in this respect) to sanction the course of proceedings followed by the two Arbitrators after the other had ceased to hold office, and it appears to me that these proceedings and the rendering of the award were unwarranted and are beyond controversy void in law.

C. D. DAY.