

the tramway both within and outside of the city limits. Appeal allowed with costs.

*Atwater*, K.C., and *Ethier*, K.C., for appellants. *Campbell*, K.C., for respondents.

Ex. C.]

POUPORE v. THE KING.

[March 30.

*Contract—Construction—Public work—Finding of referees.*

The specifications accompanying a call for tenders for the widening and deepening of a part of the St. Lawrence Canals which were a part of the contract subsequently entered into contained the following: "Parties tendering for the works are requested to bear in mind that no part of the work can be unwatered during the season of navigation, but that the water may be taken out of the canal at the close of navigation when the work of widening and deepening the channel way to the full capacity can in the usual way be at once proceeded with; otherwise the work below the surface water-line must be done by sub-aqueous excavation." The contractor for the work claimed payment for extra work and increased cost on account of the Government refusing to unwater during the winter months.

*Held*, that the contractor might be called upon to work under water during the time the canal was closed to navigation as well as when it was open and was not entitled to extra payment therefor especially as no demand was made for unwatering.

The contractor was entitled to payment at a specified rate for removal of earth and at a higher rate for "earth provided, delivered and spread in a satisfactory manner to raise towing path where required." He claimed payment at the higher rate for over 200,000 cubic yards, the resident engineer returned 69,000 as falling under the above provision and the Government allowed 23,000 yards. The Exchequer Court Judge referred it to the registrar of the court and two engineers who reported that the amount allowed by the Crown was a sufficient allowance and their report was confirmed by the Court.

*Held*, that the Supreme Court would not overrate the judgment of the expert referees.

Other clauses of the contract required the contractors to make and repeat their claims in writing within fourteen days after the date of each monthly certificate during the progress of the works and every month until adjusted or rejected. By the order-in-council referring the claims of the appellant to the Exchequer Court these clauses were waived "in so far as the repeated submission of claims is required."

*Held*, that the waiver did not relieve the contractor from making a claim after the first monthly certificate issued subsequent to it having arisen but only from repeating it after the following certificate. Appeal dismissed with costs.

*Aylesworth*, K.C., and *Christie*, for appellants. *Chrysler*, K.C., for respondent.