

the limitation of time for the performance of the contract; (c) the finality of the engineer's decision of certain matters in controversy between the parties; (d) the obtaining of written directions and certificates of the engineer as conditions precedent to recovery for extra work; and (e) the formal making and repetition of claims by the contractor, such stipulations constituting technical defences to claims by the contractor might be validly waived by a Minister of the Crown under the authority of an Order-in-Council in that behalf. *Pigott v. The King*, 10 Ex. C.R. 248, 38 S.C.R. 501, considered.

3. Upon a reference to the court of a claim by the Minister of Railways and Canals under the provisions of s. 38 of the Exchequer Court Act, in connection with which the above waivers were made, the court held that, under the circumstances, it might be declared that the contractors were entitled to recover in respect of certain items of work, leaving the questions of quantities and prices therefor to be fixed by the engineer to whom by consent of parties such questions were referred.

McLaughlin, for claimants. *Stewart*, for defendant.

Cassels, J.]

[March 15.

IN THE MATTER OF THE PETITION OF RIGHT OF JOHNSON v.
THE KING.

Public work—Injury to the person—Fatal accident to workman—Negligence—Evidence—Statement of witness before the coroner's inquest—Inadmissibility.

On the trial of a petition of right for damages against the Crown, arising out of an accident on a public work, whereby the suppliant's husband was killed, the plaintiff sought to read and put in evidence the statement of a deceased witness who had been sworn and gave evidence before the coroner at the inquest into the death of the suppliant's husband some five years before the trial of the petition. At this inquest the Dominion Government was not represented by counsel, or otherwise, and had no opportunity of cross-examining the witness whose statement was so tendered.

Held, that in the absence of an opportunity on the part of the Dominion Government to cross-examine the witness before the coroner, his evidence was inadmissible. *Sills v. Brown*, 9 C. & P. 601, considered and not followed.