

1890 HONORABLE THOMAS MCGREEVY....APPELLANT;  
 \*Nov. 13. AND  
 1891 THE QUEEN.....RESPONDENT.  
 \*June 22. ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR  
 LOWER CANADA (APPEAL SIDE).

*Petition of Right—Submission—Mediators—Award—Finality of—Art.  
 1346 C.P.C.*

T. McG. who claimed a large sum of money from the Government of the Province of Quebec under a contract he had for the construction of a portion of the North Shore Railway, agreed to submit to three mediators or *amiables compositeurs* all controversies and difficulties existing between the Government and himself, and the submission stated that these mediators should enquire into, *inter alia*, the extent of the obligation of the contract passed between the Government of Quebec and the said T. McG.; the alterations and modifications made in the plans, particulars and specifications mentioned in the said contract; what influence the said alterations and modifications may have had on the obligations of the said T. McG. and on those of the Government; the delays caused by reasons irrelevant to the action of the contractor; the pecuniary value, whether for more or for less, of the alterations or any increase in the works; and finally, all things connected with the matter and the execution of the said contract, and with regard to the charges and obligations of both the Government and the said contractor, according to the terms of the said contract.

The submission also provided that the award was to be executed as a final and conclusive judgment of the highest court of justice.

The mediators by their award, after reciting the matters in controversy between the parties, found that the Government of the Province of Quebec was indebted to T. McG. in the sum of \$147,473, and annexed thereto an affidavit stating they had inquired into all matters and difficulties submitted to them as appeared in the deed of submission. This amount being much less than the amount claimed by T. McG. he filed a petition of right, asking that the

\*PRESENT.—Sir W. J. Ritchie C.J. and Strong, Fournier, Taschereau, Gwynne and Patterson JJ.

award be set aside on the ground that it did not cover the matters referred to the arbitrators in the submission. The Superior Court for the district of Quebec set aside the award, and on appeal to the Court of Queen's Bench for Lower Canada (appeal side) that court reversed the judgment of the Superior Court and dismissed the petition of right. On appeal to the Supreme Court of Canada :

1890  
 MCGREEVY  
 v.  
 THE  
 QUEEN.

*Held*, affirming the judgment of the Court of Queen's Bench for Lower Canada (appeal side) that the object of the submission was to ascertain what amount the contractor T. McG. was to receive from the Government, and the specification of the several matters referred to in the submission was merely to secure that in determining the amount the mediators should fully consider all these matters, and that all matters having been so considered the award was valid. Strong and Taschereau JJ. dissenting.

Per Fournier J. Mediators (*amiables compositeurs*) are not subject to the provisions of art. 1346 C.P.C. and their award can only be set aside by reason of fraud or collusion if given on the matters referred to them.

**APPEAL** from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) reversing a judgment of the Superior Court in the District of Quebec (1).

The appellant had, under a contract with the Government of the Province of Quebec, built the eastern section of the North Shore Railway between Montreal and Quebec.

He had claimed as a balance due him considerable sums of money which the government refused to pay, and the difficulties between the parties had been referred to arbitrators and mediators (*amiables compositeurs*), who by their award declared that the government owed the sum of \$147,473 as the total balance.

The appellant applied to the Superior Court by petition of right to have the award set aside. The following are the materials parts of the submission to, and affidavit and award of, the mediators :—

“ Before Louis N. Dumouchel, the undersigned notary public for the Province of Quebec, in the Dominion of

(1) See 14 Can. S. C. R. 735 this appeal for want of jurisdiction where a motion was made to quash.

1890 Canada, residing and practising in the city and dis-  
 McGREEVY trict of Montreal, came and appeared :

v.  
 THE  
 QUEEN.

The Honorable Joseph Adolphe Chapleau, of the city of Montreal, acting hereto for and in behalf of the Executive Government of the Province of Quebec, in his capacity of Commissioner of Railways for the said province, and as such having the control and management of the "Quebec, Montreal, Ottawa and Occidental Railway," under an act of the Quebec Legislature, 43 & 44 Vic. ch. 3, and being also specially authorized to all and every the effects of these presents, under and by virtue of the authority of an order in council in that behalf, duly passed and adopted by the said Executive Council on the second day of May last (1881), and whereof a copy is hereto attached—party of the first part ;

And the Honorable Thomas McGreevy, of the city and district of Quebec, contractor, party of the second part : Which said parties, for the better intelligence and understanding of the present deed of submission and arbitration bond (compromise), did previously say and declare as follows :—

Whereas, &c., &c., &c.

Now therefore, these presents and I, the said notary, witness :—

That the said respective parties hereto, in order to settle definitely all the controversies and difficulties existing between themselves in the premises, do hereby mutually covenant and agree to and with each other to submit such controversies and difficulties, with all questions connected therewith, to the final decision of Walter Shanly, of the city of Montreal, Esquire, civil engineer, arbitrator and mediator (*amiable compositeur*) named by the said party of the first part, and Chas. Odell, of the city of Quebec, Esquire, civil engineer, arbitrator and mediator (*amiable compositeur*) named by

the said Thomas McGreevy, who (both hereto present and accepting such charges) shall act and proceed under the authority of the law and in conformity with these presents with Sandford Fleming, of the city of Ottawa, Esquire, civil engineer, also present and accepting, the third arbitrator and mediator, or umpire, (*tiers arbitre et amiable compositeur*,) hereby named and appointed by them the said Messrs. Shanly and Odell.

1890  
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 MCGREEVY  
 v.  
 THE  
 QUEEN.  
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And it has been specially understood :

1. That the three above named persons shall act at experts, arbitrators and mediators (*amiables compositeurs*), in the examination of the matter in litigation, and they shall inquire into and determine the extent of the obligations of the contract passed between the Government of Quebec and the said Thomas McGreevy ; the alterations and modifications made in the plans, particulars and specifications mentioned in the said contract ; what influence the said alterations and modifications may have had on the obligations of the said Thomas McGreevy and on those of the government ; the delays caused by reasons irrelevant to the action of the contractor ; the pecuniary value, whether for more or for less, of the alterations or any increase in the works ; and finally, all things connected with the matter and the execution of the said contract, and with regard to the charges and obligations of both the Government and the said contractor, according to the terms of the said contract.

2. That the powers conferred upon these persons shall be those above enumerated, and that before proceeding in their work they shall subscribe the oath provided by law.

3. That the said arbitrators shall have the authority to call for all such vouchers as they may deem requisite ; to question witnesses and the interested parties

1890  
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 MCGREEVY  
 v.  
 THE  
 QUEEN.  
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upon oath according to law, and to render their award at Quebec within four months from the date hereof, in the form and manner specified in article 1352 of the Code of Civil Procedure of Lower Canada. The time for rendering the award to be extended until the 31st December (1881) next.

4. That all costs incurred for fees, travelling and other expenses of the said experts, arbitrators and (*amiables compositeurs*) shall be borne in equal proportion by the Government and the said Thomas McGreevy; and with regard to the costs of evidence, fees and other lawyers perquisites, they shall be paid by the party incurring the same.

5. That the said parties hereto shall execute and perform, in every respect, the said award so to be rendered by the said arbitrators and (*amiables compositeurs*), or by the majority of them, as a final and conclusive judgment of the highest court of justice, without any appeal or recourse whatever, under a penalty of twenty-five thousand dollars (\$25,000) which the party accepting said award shall have the right to exact from the party refusing to comply with the same, in the event of the latter adopting any proceedings to cause the said award to be annulled and set aside under any pretence or reason whatever.

THUS DONE AND PASSED, &c.

AFFIDAVIT OF ARBITRATORS.

"A"

DOMINION OF CANADA }  
 Province of Quebec }

Walter Shanly, Esquire, civil engineer of the city of Montreal; in the district of Montreal, Charles Odell, Esquire, civil engineer, of the city of Quebec, in the district of Quebec, and Sandford Fleming, Esquire, civil engineer, of the city of Ottawa, in the county of Carleton, province of Ontario, all three duly appointed

experts, arbitrators and mediators (*amiables compositeurs*),  
by and in virtue of an act passed in the said city of  
Quebec, before and in the presence of L. N. Dumouchel,  
public notary, on the thirtieth day of July of last year  
(1881) being a deed of submission and arbitration bond  
(*compromis*) between Hon. Joseph Adolphe Chapleau,  
in his capacity of Railway Commissioner of the Pro-  
vince of Quebec, and the Hon. Thomas McGreevy,  
member of the House of Commons, railway contractor,  
of the said city of Quebec, by which act we, the said  
Walter Shanly, Charles Odell and Sandford Fleming,  
were especially charged with examining into the mat-  
ter in litigation and inquiring into and determining  
the extent of the obligations of the contract passed  
between the Government and the said Thomas Mc-  
Greevy, the alterations and modifications made in the  
plan, particulars and specifications mentioned in the  
said contract, what influence the said alterations and  
modifications may have had on the obligations of the  
said Thomas McGreevy and on those of the govern-  
ment, the delays caused by the reasons irrelevant to  
the action of the contractor, the pecuniary value,  
whether for more or for less, of the alterations or in  
any increase in the works, and finally all things con-  
nected with the matter and execution of the said con-  
tract and with regard to the charges and obligations of  
both the government and the said contractor, according  
to the terms of the said contract, as the whole appears  
more fully in a copy of the said deed of submission  
and compromise hereunto annexed, having been duly  
sworn on the Holy Evangelists do make oath and swear  
that we will faithfully proceed as experts, arbitrators  
and mediators (*amiables compositeurs*) to the view, the  
examination, the inquiry, the investigation, and report  
into and upon all the matters, and difficulties submitted  
to us by and in virtue of the said act of submission and

1890

McGREEVY  
v.  
THE  
QUEEN.

1890  
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 MCGREEVY  
 v.  
 THE  
 QUEEN.  
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compromise hereunto annexed; and that we will truly report our opinion in the premises without favor or partiality towards the said parties; so may God help us.

(Signed,)      "W. SHANLY,"  
                   "            "CHAS. ODELL,"  
                   "            "SANDFORD FLEMING."

SWORN, &c.

AWARD.

DOMINION OF CANADA, }  
 PROVINCE OF QUEBEC, }  
                   City of Hull.

TO ALL TO WHOM THESE PRESENTS SHALL COME :

We, the undersigned, Walter Shanly, of the city and district of Montreal, Civil Engineer ; Charles Odell, of the same place, Civil Engineer ; and Sandford Fleming, of the City of Ottawa, in the Province of Ontario, also Civil Engineer ;

Send greeting :—

Whereas matters in controversy between the Government of the Province of Quebec, and the Honorable Thomas McGreevy, of the city and district of of Quebec, contractor, were by them submitted to us, the undersigned, as experts, arbitrators and mediators, (*amiables compositeurs*) as set forth and more fully appears in a certain deed of submission and arbitration bond (*compromis*), executed by the said parties respectively before Louis N. Dumouchel, notary public, of the City of Montreal, and bearing date the thirtieth day of July last past, (1881) the time fixed and determined to render our award on said *compromis* having been extended and enlarged by the mutual consent of said parties to the fifteenth day of June instant (1882) inclusive, under and by virtue of four different deeds to that effect executed before the same notary, and bearing date respectively as follows : twenty-eighth

December last (1881), twenty-fifth February last (1882), 1890  
 twenty-seventh April last (1882), and thirtieth May McGreevy  
 last (1882) : Now therefore, we, the said experts, arbit-  
 rators and mediators (*amiables compositeurs*), having v.  
 been first duly sworn as appears by the document THE  
 hereto annexed, bearing date the twenty-fifth day of QUEEN.  
 January last past (1882), and marked A ; heard the  
 allegations of the said parties and their respective wit-  
 nesses under oath, and having carefully examined the  
 matters in controversy by them submitted, to wit :—  
 “ The extent of the obligations of the contract passed  
 “ between the Government of Quebec and the said  
 “ Thomas McGreevy ; the alterations and modifications  
 “ made in the plans, particulars and specifications  
 “ mentioned in the said contract ; what influence the  
 “ said alterations and modifications may have had on  
 “ the obligations of the said Thomas McGreevy and  
 “ on those of the Government ; the delays caused by  
 “ reasons irrelevant to the action of the contractor, the  
 “ pecuniary value, whether for more or for less, of the  
 “ alterations or any increase in the works ; and finally,  
 “ all things connected with the matter and the execu-  
 “ tion of the said contract, and with regard to the  
 “ charges and obligations of both the Government and  
 “ the said contractor, according to the terms of the  
 said contract ;”

Do unanimously make and render our award in writ-  
 ing, under and in execution of the said deed of submis-  
 sion and arbitration bond (*compromis*), in the following  
 manner to wit :—

That we find that the Government of the Province of  
 Quebec is indebted to the Honourable Thomas Mc-  
 Greevy in the sum of one hundred and forty-seven  
 thousand, four hundred and seventy-three dollars.

In witness whereof, we have signed these presents at



1890 the city of Hull, in the Province of Quebec, this fourteenth day of June, eighteen hundred and eighty-two.

McGreevy  
v.  
THE  
QUEEN.

(Signed,) "W. SHANLY,"  
"CHAS. ODELL,"  
"SANDFORD FLEMING."

The Superior Court set aside the award on the ground that it did not cover the matters referred to the arbitrators in the submission, but on appeal to the Court of Queen's Bench for Lower Canada that court reversed the judgment of the Superior Court and dismissed the Petition of Right.

*Irvine* Q.C. for appellant ;

*Langlier* Q.C. for respondent.

The grounds upon which the award was discussed by counsel and authorities relied on are referred to in the judgments hereinafter given.

Sir W. J. RITCHIE C.J.—It is abundantly clear from the recitals in the submission that the contractor was claiming from the government large sums of money for the execution of the works, and that the Minister in the capacity of Commissioner of Railways did not feel justified in taking upon himself the task of determining the value of the claims of the contractor ; that the contractors and Railway Commissioner did agree to refer and submit all such claims and demands to the decision of a board of arbitrators. "Now, therefore," as the submission expresses it, "the respective parties in order to settle definitely all the controversies and difficulties existing in the premises did mutually agree to submit the same with all questions connected therewith to the final decision of the arbitrators." This makes it to my mind very clear that the sole object of the arbitration was to ascertain what amount the contractor was entitled to receive from the

government, and the specification of the several matters referred to in the submission was merely to secure that in determining the amount the assessors should fully consider all these matters.

1891  
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 MCGREEVY  
 v.  
 THE  
 QUEEN.  
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 Ritchie C.J.

It is clear from the award that the arbitrators did take into consideration and did fully consider and decide on all the matters referred to them. There is nothing whatever to show or from which it can be inferred that they did not do so, and the result was the finding that the Government of the Province of Quebec was indebted to the suppliant in the sum of \$147,473, and this was a final determination of the claims and demands of the contractor, and of all things connected with the matter and execution of the said contract, and with regard to the charges and obligations both of the government and the said contractor, according to the terms of the said contract, and I think there is no ground whatever for disturbing this award, and that the appeal should be dismissed.

STRONG J.—The appeal should be allowed and judgment of Superior Court restored, with costs in this court and in the courts below.

FOURNIER J.—Le 24 septembre 1875, l'appelant contracta avec le gouvernement de la province de Québec, pour la construction de la partie est du chemin de fer de la Rive Nord. Les travaux furent complétés et le chemin remis en la possession du gouvernement en 1880. Durant la construction il fut fait des changements dans la location de la ligne. A la fin des travaux un estimé du coût total du chemin, comprenant les extra fut préparé par Mr. Light, l'ingénieur du gouvernement. Mais des difficultés étant survenues entre les parties intéressées, elles convinrent par un acte de compromis passé en juillet 1881, de s'en rap-

1891  
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 McGREEVY  
 v.  
 THE  
 QUEEN.  
 Fournier J. —

porter à la décision de Mr. Walter Shanly, nommé par le gouvernement, et Mr. Charles O'Dell nommé par l'appelant pour agir comme arbitres et amiables compositeurs, et Mr. Sandford Fleming comme tiers-arbitre et amiable compositeur choisis par les deux derniers.

Les arbitres et amiables compositeurs ayant procédé à l'examen de l'affaire qui leur avait été référée rendirent leur sentence déclarant que le gouvernement devait à l'appelant une balance totale de \$147,473.00.

McGreevy s'adressa par pétition de droit à la cour Supérieure pour faire annuler la sentence, et obtint jugement; mais ce jugement fut infirmé par la cour du Banc de la Reine. L'appel est de ce jugement.

Le compromis donne aux arbitres et amiables compositeurs les pouvoirs les plus amples pour la décision des matières en dispute qui sont énumérés comme suit dans l'acte de compromis :—

1. That the three above named persons shall act as experts, arbitrators and mediators (*amiables compositeurs*,) in the examination of the matter in litigation, and they shall enquire into and determine the extent of the obligations of the contract passed between the Government of Quebec and the said Thomas McGreevy; the alterations and modifications made in the plans, particulars and specifications mentioned in the said contract; what influence the said alterations and modifications may have had on the obligations of the said Thomas McGreevy and on those of the Government; the delays caused by reasons irrelevant to the action of the contractor; the pecuniary value, whether for more or for less, of the alterations or any increase in the works; and finally, all things connected with the matter and the execution of the said contract, and with regard to the charges and obligations of both the Government and the said contractor, according to the terms of the said contract.

Les procédés pour arriver à cette sentence ont eu lieu à Ottawa, du consentement des parties intéressées, bienqu'il n'y en ait pas d'écrit, et en leur présence, et leurs témoins et conseils ont été entendus en dehors de la province de Québec.

Le 14 juin 1882, avant l'expiration du délai fixé 1891  
pour prononcer la sentence, les arbitres et amiables McGREEVY  
compositeurs se rendirent à Hull, dans la province de  
Quebec, et y signèrent leur sentence qui fut ensuite THE  
déposée chez un notaire. La sentence déclare en ces QUEEN.  
termes : Fournier J.

That we find that the Government of the Province of Quebec is indebted to the Hon. Thomas McGreevy in the sum of \$147,473.00.

L'appelant dit dans son factum :

This amount being very much less than the amount claimed by the contractor, and being advised that the award of the arbitrators was, for various reasons, null and void, he presented a petition of right, &c., &c.

Voilà une admission bien formelle de la part de l'appelant que sa principale raison d'attaquer la sentence, c'est quelle ne lui accorde pas un montant assez élevé.

Il allègue aussi que les arbitres n'avaient aucun pouvoir de décider d'autres questions que celles énoncées dans le compromis, et qu'ils étaient obligés de décider tous les points qui leur étaient soumis.

Il se plaint encore que la seule question décidée par eux est que dans leur opinion le gouvernement est endetté envers l'appelant en la somme de \$147,473.00. Il prétend que cette question ne leur était pas référée. D'après lui les amiables compositeurs auraient dû se borner à définir, 1° l'étendue des obligations du contrat ; 2° les changements et modifications faits aux plans et specifications ; 3° l'effet de ces changements ont pu avoir sur les obligations respectives des parties ; 4° les délais causés au contracteur ; 5° la valeur en plus ou en moins des changements faits, et enfin, 6° toutes matières ayant rapport à l'exécution, en prenant en considération les obligations respectives des parties.

Les amiables compositeurs n'ont sans doute pas procédé comme une cour ordinaire, et ne sont pas entrés dans les détails des procédés et des motifs sur lesquels

1891 ils ont fondé leur sentence arbitrale. Leur qualité  
 McGREEVY d'amiables compositeurs les en dispensait. Il en eût  
 v. été autrement s'ils eussent été seulement nommés arbi-  
 THE tres.  
 QUEEN.

Fournier J. Notre code de procédure, article 1346, dit : —

Les arbitres doivent entendre les parties et leur preuve respective, ou les constituer en défaut, et juger suivant les règles de droit, à moins qu'ils n'en soient dispensés par le compromis, ou qu'ils ne soient établis amiables compositeurs.

Le code n'a fait aucun changement à l'ancien droit au sujet des amiables compositeurs. Ils sont encore aujourd'hui comme auparavant, dispensés d'observer les règles de droit et les formes de la procédure, ils décident suivant l'équité et la bonne conscience. Leur sentence, pourvu qu'elle soit dans les limites de leurs attributions ne peut être mise de côté que pour fraude ou collusion.

Dalloz Vo. *Arbitrage*, (1) :—

Les amiables compositeurs sont les arbitres qu'on nommait autrefois arbitrateurs. Ce sont ceux qui ont pouvoir de juger sans formalité judiciaire ; ils peuvent tempérer la rigueur de la loi, écouter l'équité naturelle que l'orateur romain appelle *laxamentum legis* et prononcer *non pro ut lex, sed pro ut humanitas aut misericordia impellit regere*.

Les arbitres au contraire doivent juger suivant la loi et observer les règles de la procédure.

Les amiables compositeurs sont affranchis en outre des règles du droit. C'est là ce qui les distingue des arbitres volontaires (2).

Bioche, (3) :—

Cependant, lorsque les parties leur ont donné, par le compromis, la faculté de prononcer comme amiables compositeurs, ils peuvent se départir des règles du droit et suivre l'équité naturelle.

D'après ces autorités, il est évident que les amiables compositeurs avaient le droit de rendre leur sentence dans la forme qu'ils ont adoptée, c'est-à-dire d'une

(1) Vol. 5, p. 67, No. 1019, ch. 10, art. 3.

(3) Vol. 1, Vo. Arbitrage p. 525, No. 463.

(2) Id. No. 1020.

manière générale et sans entrer dans des détails. Mais leur sentence n'en est pas moins complète et porte sur toutes les matières référées comme on le voit par l'extrait suivant de la sentence :—

1891  
McGreevy  
 v.  
THE  
QUEEN.  
 Fournier J.

Now therefore, we, the said experts, arbitrators and mediators (*amiables compositeurs*), having been first duly sworn as appears by the document hereto annexed, bearing date the twenty-fifth day of January last past, (1882), and marked A ; heard the allegations of the said parties and their respective witnesses under oath, and having carefully examined the matters in controversy by them submitted to wit :— the extent of the obligations of the contract passed between the Government of Quebec and the said Thomas McGreevy ; the alterations and modifications made in the plans, particulars and specifications mentioned in the said contract ; what influence the said alterations and modifications may have had on the obligations of the said Thomas McGreevy and on those of the Government ; the delays caused by reasons irrelevant to the action of the contractor, the pecuniary value, whether for more or for less, of the alterations or any increase in the works ; and finally, all things connected with the matter and the execution of the said contract, and with regard to the charges and obligations of both the Government and the said contractor, according to the terms of the said contract.

Comme ils le déclarent, les amiables compositeurs ont entendu les parties et leurs témoins, et examiné soigneusement toutes les matières en contestation qui leur ont été soumises, qu'ils énumèrent, en citant textuellement la partie du compromis qui les définit. Ainsi il ne peut pas y avoir eu d'omissions, toutes les matières référées ont été examinées et décidées. Et c'est après cela qu'ils ont fixé le montant dû par le gouvernement à l'appelant.

Il suffit de lire le compromis pour comprendre que la proposition de l'appelant que la fixation de la somme due n'était pas référée aux arbitres, n'est pas soutenable. C'est l'unique but que les parties avaient en vue, celui d'arriver à un règlement final et de mettre un terme aux incessantes réclamations que faisait l'appelant pour de grandes sommes d'argent lui revenant pour l'exécution des travaux de son contrat. D'ailleurs la chose

1891  
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 McGREEVY l'on trouve à la page 20 du dossier, comme le fait voir  
 v.  
 THE l'extrait suivant :—  
 QUEEN.

And whereas, ever since the Government has taken possession of the Fournier J. said road, the contractor has never ceased to claim from the party of the first part the payment of large sums of money for the execution of the said works.

And whereas the said party of the first part does not feel justified in taking upon himself, not even with the assistance of the ordinary officers of his Department, the task of determining the value of the claims of the said contractor, nor does he believe himself qualified to make a just appreciation of the definitive estimates of the Chief Engineer Mr. Light.

Now therefore, these presents and I, the said notary witness :—

That the said respective parties hereto, in order to settle definitively all the controversies and difficulties existing between themselves in the premises, do hereby mutually covenant and agree to and with each other, to submit such controversies and difficulties, with all questions connected therewith, to the final decision of Walter Shanly, of the City of Montreal, Esquire, Civil Engineer, arbitrator and mediator (*amiable compositeur*) named by the said party of the first part, and Chas. Odell, of the City of Quebec, Esquire, Civil Engineer, arbitrator and mediator (*amiable compositeur*) named by the said Thomas McGreevy, who (both hereto present and accepting).

Comme on le voit par cet extrait la nécessité de fixer le montant des réclamations de l'appelant a été la raison déterminante du compromis, les autres questions mentionnées dans la référence ne sont que des sujets d'examen pour en arriver à la solution principale, la fixation du montant dû par le gouvernement à l'appelant. Si les amiables compositeurs n'eussent fait rapport d'une somme déterminée, ils auraient totalement failli à leur devoir, et leurs procédés auraient été sans valeur. Non seulement il n'y a pas eu en cela excès de pouvoir, mais en supposant même que le compromis eût été silencieux sur cette question, les amiables compositeurs avaient d'après la loi et la jurisprudence le pouvoir de statuer sur le montant dû à l'une des deux

parties sans excéder leur juridiction suivant l'autorité de Dalloz (1) :

4<sup>e</sup> Que chargés de prononcer sur tous les différends élevés entre les parties, ils peuvent s'il a lieu, ordonner des compensations entre elles sans excéder leur mandat ; ils peuvent en pareil cas, a dit la cour Royale, prescrire aux parties tout ce que, par voie de transaction, celles-ci auraient pu faire (Angers 1<sup>er</sup> juin 1822, même espèce) ; c'est là, on le voit, donner la plus grande latitude au pouvoir des amiables compositeurs ; et certes quand on examine, et la nature des débats qui divisent les parties et l'intention manifestée dans le compromis, on reste convaincu que le pouvoir des arbitres avait pu aller jusque-là (2).

1891  
 McGREEVY  
 v.  
 THE  
 QUEEN.  
 Fournier J.

L'appelant s'est aussi plaint que la sentence arbitrale est nulle parce que les amiables compositeurs n'ont pas donné les motifs de leur décision. C'est méconnaître complètement la loi qui régit leurs fonctions que de les assimiler en cela aux cours ordinaires, en les prétendant soumis à l'obligation que la loi ne leur impose nullement de donner les motifs de leurs décisions.

Bioche, (3).

Toutefois, le défaut de motifs n'entraîne pas la nullité, si les arbitres sont amiables compositeurs.

Dans la cause de *Allien v. Allien*, (4) la cour de Bordeaux a décidé, le 28 novembre 1835, que les amiables compositeurs n'étaient pas obligés de motiver leur sentence.

L'appelant a invoqué un autre moyen pour attaquer la sentence en prétendant que les amiables compositeurs et les témoins n'avaient pas prêté serment. C'est une évidente erreur de faits. La sentence contient la formule du serment prêté par les amiables compositeurs et la minute de leurs procédés contient la formule de l'assermentation des témoins.

Un dernier moyen de l'appelant, encore moins fondé que le précédent, c'est que la sentence a été rendue à

(1) Vo. Arbitrage, ch. 10, art. 3, No. 1025, p. 69.

(3) Vo. Arbitrage No. 474.

(2) Voir la note 1 ; voir aussi No. 1026, note 2, 3 et 4.

(4) Dalloz Vo. Arbitrage, No. 10



1891 Hull, au lieu de l'être dans la cité de Québec. Il est  
 McGREEVY vrai que dans le compromis, il est dit que les amiables  
 v. compositeurs rendront leur sentence à Québec, dans les  
 THE quatre mois de sa date. Il était nécessaire de fixer le  
 QUEEN. délai dans lequel devait être rendue la sentence. Cette  
 Fournier J. formalité est établie par l'article 1344, code de procédure :

L'acte de compromis extra-judiciaire doit désigner les noms et qualités des parties et des arbitres, les objets en litige et le temps dans lequel la sentence arbitrale doit être rendue.

Il n'est nullement question de la fixation du lieu où la sentence doit être prononcée, ni dans cet article, ni dans aucune autre loi. Le fait que la sentence a été rendue à Hull, au lieu de Québec, n'a aucune importance quelconque et n'affecte nullement les pouvoirs des amiables compositeurs. L'appelant est le dernier qui devait offrir une telle objection, puisque c'est à sa demande que les amiables compositeurs ont procédé à Ottawa, comme le prouve le témoignage de Mr. Walter Shanly, l'un des amiables compositeurs. Il a acquiescé à tous les procédés en y assistant en personne, en s'y faisant aussi représenter par son frère Robert McGreevy et par son conseil, Mr. Irvine. Si cette objection avait quelque valeur, le défendeur a, par sa conduite, formellement acquiescé à la procédure des amiables compositeurs et renoncé au droit, s'il en avait eu, de s'en prévaloir. L'appel doit être débouté avec dépens.

TASCHEREAU J.—The judgment appealed from in this case was rendered by the Court of Queen's Bench for the Province of Quebec, reversing a judgment of the Superior Court, in the district of Quebec. The circumstances which have given rise to the present proceedings are as follows:—

Thomas McGreevy, the present appellant, entered into a contract with the government of the Province of Quebec on the 24th September, 1875, for the con-

struction of the eastern portion of the North Shore Railway. This railway was finally completed and handed over to the government in the month of January, 1880. During the course of the construction of the road various changes were made in the location of the line, causing extra expense and delay to the contractor, and at the period of the completion of the work and the delivery of it to the government, an estimate of the total cost of the road including allowance for extra work was made by Mr. Light, the government engineer. Thereupon various questions and difficulties arose between the government and the appellant, he claiming more than the amount allowed by the government, and the government offering him a less amount, and in the month of June, 1881, an agreement was made between the government and McGreevy that the matters in dispute between them should be referred to the arbitration of Mr. Walter Shanly, appointed by the government, Mr. Charles O'Dell appointed by the contractor, and Mr. Sandford Fleming agreed upon as umpire by the first named gentlemen. The submission to the arbitrators recites the agreement between the parties, the variations in the location of the road and certain of the extra work which the appellant had been called upon to do, and the delays which various circumstances had caused in the construction of the work, and that the parties had agreed to refer the matter to arbitration in the way already mentioned. The matters referred to these arbitrators were :—

That they should inquire into and determine the extent of the obligations of the contract passed between the government of Quebec and the said Thomas McGreevy ; the alterations and modifications made in the plans, particulars and specifications mentioned in the said contract ; what influence the said alterations and modifications may have had on the obligations of the said Thomas McGreevy and on those of the government ; the delays caused by reasons irrelevant to the action of the contractor ; the pecuniary value whether for more or for

1891  
McGreevy  
 v.  
THE  
QUEEN.  
Taschereau  
J.

1891 less of the alterations or any increase in the works ; and finally all  
 ~~~~~ things connected with the matter and execution of the said contract,  
 McGREEVY v. and with regard to the charges and obligations of both the govern-  
 THE ment and the said contractor, according to the terms of the said con-  
 QUEEN. tract.

Taschereau J. The submission then goes on to specify the manner  
 — in which the proceedings are to be carried on, the  
 time within which the award is to be made and other  
 particulars of minor importance.

The proceedings under this submission were held in  
 the City of Ottawa.

On the 14th June, 1882, the arbitrators signed a  
 document which was afterwards deposited with a  
 notary as their award. The document, after reciting  
 a portion of the submission, contains the following find-  
 ing:—"That we find that the government of the Pro-  
 vince of Quebec is indebted to the Honorable Thomas  
 McGreevy in the sum of \$147,473." This amount being  
 very much less than the amount claimed by the appel-  
 lant he is now asking, for the reasons given in the  
 petition, that this award should be held to be null and  
 void. The Lieutenant-Governor having granted his  
 fiat on the petition of right, proceedings were then  
 taken in the usual way before the Superior Court, and  
 on the 2nd March, 1885, Mr. Justice Caron rendered a  
 judgment in which he granted the conclusion of the  
 petition of right and declared the award to be null and  
 void and of no effect whatever, mentioning as his rea-  
 son that the award did not cover the matters referred  
 to the arbitrators in the submission. The Court of Ap-  
 peals reversed the judgment of the Superior Court and  
 dismissed the petition of right. The judges have not  
 given their reasons for this judgment, and the only  
*considérant* given in the judgment was a general one  
 that the arbitrators had determined all the questions  
 submitted to them, and that whatever irregularities

there might have been in the proceedings of the arbitrators had been waived by the appellant.

I am of opinion that we should restore the judgment of the Superior Court. The arbitrators were bound to dispose of all the points submitted to them, the adjudication which they had undertaken. The only matter decided of by them was the simple fact that in their opinion the government owed the appellant the sum of \$147,473. Now, in order to reach that final result, the submission provided that they should decide these several points :

1st. The extent of the obligations of the contract passed between the Government of Quebec and the said Thomas McGreevy.

2nd. The alterations and modifications made in the plans, particulars and specifications, mentioned in the said contract.

3rd. What influence the said alterations and modifications may have had on the obligations of the said Thomas McGreevy and on those of the government.

4th. The delays caused by reasons irrelevant to the action of the contractor.

5th. The pecuniary value whatever for more or for less of the alterations or any increase in the works ; and finally,

6th. All things connected with the matter and the execution of the said contract and with regard to the charges and obligations of both the government and the said McGreevy according to the terms of the said contract.

Not one of these points (the only matters referred to the arbitrators) was decided by them. They have simply struck a balance of account and stated the amount to which they considered the appellant entitled. The appellant, it seems to me, had the right to a decision on the various details mentioned in paragraph one of the matters submitted to the arbitrators. It was

1891  
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 MCGREEVY  
 v.  
 THE  
 QUEEN.  
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 Taschereau  
 J.  
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1891 not sufficient, in my opinion, for the arbitrators to state  
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 McGREEVY that they had examined all the points referred to them.  
 v. The submission obliged them to pass and determine  
 THE on each of them which they have not done. On this  
 QUEEN. ground alone I would allow the appeal.  
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 Taschereau  
 J.

GWYNNE J.—The whole contention upon this appeal, as argued before us, was that the award which the appellant seeks to set aside as null and void purports to decide a point which, as is contended, never was at all submitted to the arbitrators, namely, the amount in which the government of the Province of Quebec are justly indebted to him upon his contract for the construction of a portion of the North Shore Railway ; and that it does not determine certain points which, as is contended, were the only points submitted to the arbitrators to be determined.

The construction of the submission deed appears to me to be that the sole object of the reference to the *amiables compositeurs* was to obtain their final determination of the true and just amount (under the particular circumstances recited in the deed and having due regard to those circumstances) of the appellant's claims and demands against the government of the province of Quebec under his contract, which circumstances, " in the examination of the matter in litigation," between the parties to the reference, that is, in the examination of the amount due to the contractor by the government, the *amiables compositeurs* were required to inquire into, and to be governed by, in making their award as to the amount of the contractor's claim against the Government which was " the matter in litigation."

The deed recites the various circumstances which the appellant relied upon as increasing the amount of his claims, viz :—the alterations in the route and plans of the railway from those originally designed when the

contract was entered into ; the delays alleged to have been caused to the contractor proceeding with the work which operated to his prejudice ; the facts that, " with the view of determining and settling as quick as possible the claims of the contractor," it was agreed between him and the provincial government, that final estimates should be prepared by the Chief Engineer of the provincial government, and that so soon as these estimates should be approved the government should pay all moneys which should appear to be due and owing to the contractor ; that those estimates were prepared by the chief engineer, and that the contractor (the now appellant) never ceased to claim from the provincial government large sums of money for the execution of the said work, and that the minister, representing in that matter the provincial government, not feeling himself justified in taking upon himself the task of determining the value of the claims of the contractor, or of appreciating the definitive estimates of the chief engineer, it was agreed between the contractor and the minister acting on behalf of and representing the provincial government to refer and submit all such claims and demands of the contractor to the decision of a board of arbitration. And in order to settle definitively all the controversies and difficulties existing in the premises, the appellant and the minister mutually covenanted and agreed to submit such controversies and difficulties with all questions connected therewith to the final decision of three *amiables compositeurs* named in the deed.

Now, from these recitals and the submission thereupon made, it is abundantly clear that the whole matter in controversy between the parties to the submission was as to the amount of the just claims and demands which the appellant under the special cir-

1891  
 McGREEVY  
 v.  
 THE  
 QUEEN.  
 Gwynne J.

1891  
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 McGREEVY v.  
 THE  
 QUEEN.  
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 Gwynne J.

cumstances recited in the deed had against the provincial government, an inquiry into which matter involved, of course, an inquiry into the correctness of the estimate of such amount as made by the chief engineer. The object of the reference plainly was that the persons named as arbitrators in the submission deed should, as competent experts and as *amiables compositeurs*, finally determine the amount of the contractor's just claims which the minister, feeling himself not qualified to make a just appreciation of the definitive estimates of the chief engineer, declared himself to be incompetent to determine. It was "the claims and demands" of the contractor for the amount contended by him to be due to him by the Provincial Government which constituted the special matter expressly agreed to be referred to the decision of the experts (*amiables compositeurs*) and the parties to the reference covenanted, that they should respectively execute and perform in every respect the award to be made by them, or by a majority of them, as a final and conclusive judgment of the highest court of justice. Now, from the terms of the deed of submission, there does not appear to have been anything which can be suggested, nor has there been anything suggested, which the provincial government could be called upon to execute and perform, or which they could execute and perform in obedience to an award made in pursuance of the submission, unless it be to pay the amount which should be awarded as due by the provincial government to the appellant in respect of the contract in the deed of submission mentioned.

The award instead of being made defective by professing to determine such amount would have been, in my opinion, wholly defective, barren and useless, if it had not done so finally and conclusively, so that it should operate, as it was expressed by the deed of sub-

mission and intended that it should operate, as a final and conclusive judgment of the highest court of justice. The award upon its face declares (and the truth of what is stated in it is not disputed) that the *amiables compositeurs*, in their examination of the matter in litigation which as I have already said was, in my opinion, the true amount of the appellants' just claim against the government of the province of Quebec, did carefully inquire into and take into their consideration the several matters which the appellant relied upon as increasing the amount of his claim, stating them *seriatim* as they are set out in the deed of submission, and that having done so they unanimously found the true amount in which the government of the province of Quebec were indebted to the appellant to be the sum of \$147,473. They have thus, in my opinion, complied with the object and intent of the deed of submission, and we should defeat the intention of the parties as expressed in that deed if we should pronounce the award to be null and void upon the ground urged, and as this was the only ground which was relied upon, the other points of objection stated in the petition of right not having been pressed, I am of opinion that the appeal should be dismissed with costs.

1891  
 MCGREEVY  
 v.  
 THE  
 QUEEN-  
 Gwynne J.

PATTERSON J.—I am also of opinion that this appeal should be dismissed with costs.

*Appeal dismissed with costs.*

Solicitor for appellant: *Irvine, Q. C.*

Solicitor for respondent: *Taillon, Q. C.*

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