

1897
 Oct. 11.

THE DOMINION ATLANTIC RAIL- } CLAIMANTS;
 WAY COMPANY..... }

AND

HER MAJESTY THE QUEEN.....DEFENDANT.

Practice—Submission to Arbitration—Award—Rule of Court—Judgment.

The Exchequer Court has no jurisdiction to entertain an application to make an award under a submission to arbitration by consent in a matter *ex foro*, a judgment of the court.

THIS was an application to make an award under a submission to arbitration in a matter not before the court, a judgment of the court.

October 4th, 1897.

C. J. R. Bethune, in support of motion ;

F. H. Gisborne, for the Crown, opposing only as to costs.

THE JUDGE OF THE EXCHEQUER COURT now (October 11th, 1897) delivered judgment.

This is an application on behalf of The Dominion Atlantic Railway Company to make an award made in matters in difference between the company and the Crown a judgment of this court. By the agreement of submission between the parties it was, among other things, provided that the award should, upon the application of either of the parties, be made a judgment of the Exchequer Court of Canada. Counsel appeared for the Crown upon the application and consented that the order asked for should be granted, provided it were made without costs. So there is nothing in the way of granting the application if the court has the necessary jurisdiction or authority ;

but if it has not the agreement or consent of the parties will not give jurisdiction.

Before the statute 9-10 William III, chap. 15, when persons were out of court they could not by any agreement bring themselves into court and create a jurisdiction to issue process of contempt. (1). By that statute it was provided that merchants and others desiring to end any controversy by the submission of their suits to the award or umpirage of any person might make the submission a rule of any of His Majesty's Courts of Record which the parties should choose. A like provision occurs in the 17th section of *The Common Law Procedure Act*, where it is provided that: "Every agreement or submission to arbitration by consent, whether by deed or instrument in writing, not under seal, may be made a rule of any one of the superior courts of law or equity at Westminster, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of court, and if in any such agreement or submission it is provided that the same shall or may be a rule of one in particular of such superior courts, it may be made a rule of that court only" There is a like provision in the Statutes of Ontario and some of the other provinces (2). There is, however, no statute conferring any such jurisdiction upon the Exchequer Court of Canada, and in the absence of a statute the court has no jurisdiction. This view will, I think, be strengthened by reference to section 23 of *The Exchequer Court Act*, which provides that: "Any claim against the Crown may be prosecuted by peti-

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(1) *Nichols v. Chalkie*, 14 Ves. Jr. 265; *Steers v. Harrop*, 1 Bing. 133; *t.*; *Lyall v. Lamb*, 4 B. & Ad. 468. (2) R. S. O. c. 53, ss. 13-15; R. S. N. S. 5th s., c. 115, s. 21; 21 Geo. III (P. E. I.) c. 4.

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“ tion of right, or may be referred to the court by the
“ head of the department in connection with the ad-
“ ministration of which the claim arises.” It is, I think,
clear that without a *fiat* or a reference by the head of
a department of a claim against the Crown there can
be no proceeding in this court which would result in
a judgment against the Crown.

Application refused.
