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Arbitration
Who Must Administer the Oath to the Withness

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forbidden him to wander from one shop to another or to content himself with being, at the end of his apprenticeship, a semi-qualified workman. It is quite clear that only good effects for the printing industry can result from the apprenticeship contract.

The apprentice, like the employer, is not always irrevocably held by the apprenticeship contract. If it happens that the apprentice or the employer violates the conditions of the contract, or again, if the economic circumstances become such that the teaching of the trade is no longer possible, the Apprenticeship Commission can then relieve the apprentice and the employer of all obligations fixed by the Apprenticeship Contract.

The Apprenticeship Commission does not require for the present that apprentices who were in a stage of apprenticeship before the 31st of October, 1947 (the date when the Quebec Official Gazette published the notice of the incorporation of the vocationa training plan under a Decree relating to the printing trades) sign an apprenticeship contract. Further, it respects for the moment the present classification of these apprentices. But it reserves always the right to revise this classification later in the light of the vocational training standards which it has established. As for those apprentices who commenced their apprenticeship on or after the 31st of October 1947, the Apprenticeship Commission will ask them shortly to sign an apprenticeship contract. It will not require it, however, until the expiration of the sixth month of their period of probation which is an obligatory one of a year.

The duration of the vocational training is in principle fixed at six years. It can only be reduced under certain conditions — notably if the apprentice has followed courses at the Graphic Arts School. In these cases the remission of the length of training can only be accorded by the Apprenticeship Commission on the express request of the apprentice and must be justified by him.

At the end of the period of vocational training the apprentice should present himself before a jury to submit to examinations consisting of theoretical and practical divisions. If he should pass them with success and if his record is judged satisfactory he receives from the Apprenticeship Commission a certificate of professional qualification which will attest that he is a competent craftsman.

ARBITRATION

WHO MUST ADMINISTER THE OATH TO THE WITNESS

MARIE-LOUIS BEAULIEU

Does the swearing in of witnesses by the registrar render void the arbitration award ?

Since arbitration tribunals have existed in the Province it has been the custom for the registrar to swear in the witnesses. Me Marie-Louis Beaulieu in an arbitration where he acted as representative for employees attacks this manner of acting as rendering the testimony illegal and by the same fact asserts the nullity of the judgment given in this case.

We have decided we should reproduce the part of the dissident report which he presented in the arbitration of the dispute between « le Syndicat Catholique des employés de fonderie de Plessisville Inc. » and Forano Ltd. The tribunal was presided over by Mr. Justice Alphonse Garon and Mr. Dollard Huot, C.A., represented the defendant company thereon. Elsewhere the complete arbitration judgment can be real at it was reproduced in the Bulletin of the Department of Labour, number 229, under the date of May 4, 1948.

The point of law raised by Me Beaulieu in the part of his report where he treats of the illegality of the testimony and the invalidity of the award for the reason already mentioned, assumes great importance seeing that it could perhaps justify the attitude of one party in not acknowledging the value of an arbitration sentence.

« The evidence furnished in the brief as well as the depositions which accompanied the documents produced before us are illegal and null because the witnesses were sworn in by the registrar and not by the president of the arbitrators. In arriving at this conclusion I take my stand on

the following pieces of legislation: — The Public Officers Act, R.S.Q. 1941, Ch. 10; The Courts of Justice Act, R.S.Q., 1941. Ch. 15; and the Quebec Trade Disputes Act, R.S.Q. 1941, Ch. 167.

We are not confronting a defect of form or an irregularity, two cases which fall under the power of section 33 of the Quebec Trade Disputes Act; we are confronting a fundamental question which comports invalidity. In short, we face a question of jurisdiction. The various registrars who have administered the oath to witnesses did so without authority and that is a serious ground for complaint.

We must not forget the fact that we are confronting an extra-judicial arbitration which has a certain analogy with the arbitration of the Code of Civil Procedure (Section 1431 and following, C.C.P.). The analogy between the two is indicated by the legislative power itself in the Quebec Trade Disputes Act, section 26, which obviously is not to imply that all the eleventh part of the Code of Procedure applies to arbitrations such as ours.

The illegality which I point out cannot be concealed by acquiescence. The doctrine and the jurisprudence in this matter are well known. One can only acquiesce in a thing one acknowledges. It would be necessary for the parties to recognize the defect in jurisdiction of the registrars and pay no attention to them.

One might say perhaps, that there is no prejudice here. To that I would reply that it concerns a matter of public order. Such is indeed, the character of the laws that require the swearing in of witnesses.

Nobody doubts that this violation was made unwittingly but that does not in anny way alter the point.

The arbitrators should follow the legislative texts of public order which do not permit the swearing in of witnesses by a registrar. They must make this law respected.

When the legislative body desired that the commissions and tribunals having jurisdiction in matters concerning a conflict of interest hear witnesses without the taking of an oath, it expressed itself quite clearly on the point.

Can one say that what I have just written is stamped with precisianism? We must not confuse precisianism with what is substantial or fundamental in the domain of law. In support of my opinion I would like to cite the well-known judgment of Verret & Co. versus Pollack, S.C. 70, p. 438. « An arbitration award founded on the oral testimony of witnesses who have not been sworn in by a competent officer is illegal and void. »

It could be said, perhaps, that this decision does not apply to our particular case because it was rendered by a common law tribunal. Without entering into the discussion which such a claim can provoke and without making the distinctions which present themselves between an arbitration like ours and that of the Code of Civil Procedure, I do not hesitate to affirm that the basic principles enunciated by the Honourable Mr. Justice Bouffard are completely applicable here, and I do not fear contradiction on this point. On the contrary, I even desire that my opinion be submitted to the Attorney General's Department.

Can we invoke here section 24 of the Quebec Trade Disputes Act? « The council of arbitration shall decide the dispute according to equity and good conscience. » (R.S. 1925 c. 97, a. 24).

It is sufficient to ask the question to have it answered. Elsewhere, the legislative power itself gives it to us in the third paragraph of the 27th section of the same law.

Unfortunately, in certain circles, under pretext that disputes such as these bear on conflicts of interests and not on conflicts of law, and for other reasons of no particular value, we are too often induced to state that the arbitrators should themselves decide leaving out of account the laws. It is true that the judgment which we are called to render is not obligatory in the sense that it cannot be executed except under the authority of judicial tribunal. Sanction here is of an economic order but that does not signify that the arbitrators, if they have the competence to do so, should not apply the laws, giving them the sense attributed to them by the legislative body. We see immediately, to what the contrary would lead — for example, the employer could refuse to conform with a sentence unfavourable to him under the pretext that the provisions of the legislation had not been respected. »