BETWEEN

1908
April 15

HIS MAJESTY THE KING ON THE INFORMATION OF THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA..... } PLAINTIFF;

AND

THE ROYAL TRUST COMPANY OF CANADA, EXECUTORS AND TRUSTEES OF FRANK BULLER..... } DEFENDANTS.

Expropriation—Government railway—Taking possession of land—Vesting of title in Crown—Compensation.

Under the provisions of sec. 18 of *The Government Railways Act*, 1881, [See now R. S. c. 143, sec. 22] lands taken for the purposes of a Government railway became absolutely vested in the Crown at and from the time of possession being taken on its behalf, and compensation must be assessed in respect of the value of the lands at that period. *The Queen* v. *Clarke* (5 Ex. C. R. 64) explained; *The Queen* v. *Murray* (5 Ex. C. R. 69); and *Paint* v. *The Queen* (2 Ex. C. R. 149; 18 S. C. R. 718) referred to.

THIS was an information by the Attorney-General of Canada seeking to obtain possession of land for the purposes of a railway.

The facts of the case are stated in the reasons for judgment.

February 14, 1908.

The evidence was now taken before an examiner, and the case subsequently submitted on written arguments.

A. Whealler, for the plaintiff;

G. E. Corbould, K.C., and *J. R. Grant* for the defendants.

CASSELS, J. now (April 15th, 1908) delivered judgment.

This information is filed on behalf of His Majesty to have the compensation ascertained for certain lands form-

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ing part of the west half of Lot No. 190, Group 1, New Westminster District.

The lands were expropriated for the Canadian Pacific Railway.

There is no dispute as to the quantity of land taken, both the plaintiff and defendant admitting the area to comprise one and twenty one-hundreths of an acre.

By the information the Crown offers in full satisfaction the sum of $10.26 for the land taken and the damage for severance, &c.

The defendant places the value of the lands expropriated at $75 a lot or $375 per acre.

A good deal of evidence has been taken by consent before Mr. Beck, and also by consent written arguments have been put in, and I am asked to adjudicate on the evidence and these arguments.

As it seems to me, there is a good deal of useless evidence adduced to show the value of the lots as subdivided, the value of the portion of the lots expropriated and the loss occasioned by the severance of the lots. The defendant even goes so far in its evidence as to contend that assuming the case should be determined on the basis of the existing plan it is entitled to damage by reason of lots 67 an 65 being cut off from access to Fifth Street, ignoring the fact that had the railway never gone near its lands its plan laying out a series of lots 38 to 46, fronting on Fifth Street, necessarily cut off access to Fifth Street over any of the southern lots.

I am of opinion that in arriving at the amount of compensation to be paid the plan subdividing that part of lot No. 190 owned by the defendant, representing the estate of the late Dr. Buller, should be ignored and the case treated as it no sub-division into lots had been effected, but as if the railway had expropriated when that portion of Lot No. 190 had not been subdivided.

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So far as the amount to be allowed is considered it is not of much consequence, as the value of the land prior to sub-division into lots is neither augmented in value nor diminished in value by the sub-division.

It may however affect the question of damages occasioned by the severance of the lands, and the intricate questions discussed in the evidence as to whether lot 46 was rendered wholly valueless, 45 and 44 nearly wholly valueless. Whether the three together are capable of use, and so forth.

It is undisputed that pursuant to *The Government Railways Act* of 1881, the plan of lands required for the right of way for the Canadian Pacific Railway through the portion of lot 190 in question was deposited on the 6th September, 1882, in the Land Registry Office at Victoria. This plan had been approved by the engineer in charge, Mr. Marcus Smith, also by the Dominion Government Agent, Mr. Trutch.

It is proved that in the winter or spring of 1883 the railway took possession of the lands in question, constructed their line of railway, and have ever since occupied the same.

The sub-division into lots was by plan deposited in the Land Registry Office on the 17th June, 1884.

On the 14th July 1885 what may be called a Book of Reference was deposited in the Land Registry Office.

It seems to be assumed by counsel that the case of *The Queen* v. *Clarke* (1) determines the question, and that the 14th July, 1885, must be the date on which the lands were vested in the railway. The case of *The Queen* v. *Clarke* does not so determine. The learned judge in that case was dealing with a case where possession had not been taken. As to the right of way in that case he expressly states :—" and with the exception possibly of " the right of way there was no such taking of possession

(1) 5 Ex. C. R. 64.

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" of the lands expropriated as would give the Crown title " under the 18th section of the Act ".

He was of opinion that it was of no consequence whether the period for ascertaining the compensation for the lands taken as right of way was taken as of 1882 or 1885, as there was no difference in value between these dates. When however it came to a question of allowing for buildings erected between 1882 and 1885 then it became material, and the fact in that case was that the railway was not in possession.

By *The Government Railways Act*, 1881, section 17, it is provided that the arbitrators in estimating and awarding the amount to be paid any claimant for injury done to any land or property and in estimating the amount to be paid for lands taken by the Minister under this Act shall estimate or assess the value thereof at the time when the injury complained of was occasioned.

The railway in this case was, as stated, in possession of the claimant's land in 1883.

Section 18 of *The Government Railway Act*, 1881, provides that the lands shall by the fact of the taking possession become absolutely vested in the Crown.

I am of opinion, therefore, that the valuation should be arrived at as of the earlier period, and not 1885. *The Queen* v. *Clarke*, (*supra*); and *The Queen* v. *Murray* (1) as well as *Paint* v. *The Queen* (2) fully deal with the principles that should govern in dealing with a case of this nature.

The difficulty is, from the evidence given in this case, to form any reasonable idea of the sum to be allowed. Too much is left to conjecture. It is noticeable that the defendant in this case notwithstanding the evidence of various sales at high prices (some or most of which were eventually abandoned) places the value of his lots at $75 a lot.

(1) 5 Ex. C. R. 69.

(2) 2 Ex. C. R. 149; 18 S. C. R. 718.

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For the Crown, Shannon places the value of the land at $100.00 an acre.

Major in his evidence supports this view.

There is no evidence on the part of the plaintiff of any benefit as an offset.

The Crown has offered $10.26 for the lands taken.

This acreage taken is one $\frac{20}{100}$ acres, and if I am correct in my view this should be increased by the lands taken on the part which, subsequent to the possession, was dedicated as streets.

The case is one in which it is impossible to arrive at any exact conclusion.

I think justice will be met by allowing the defendant $300.00 for the lands taken and injury caused by severance. There seems to be no doubt on the part of the witnesses that damage has been occasioned by the severance.

The plaintiff should pay the costs of defendant, and interest should be allowed on the amount awarded in the usual manner.

Judgment accordingly.

Solicitor for plaintiff : *F. W. Howay.*

Solicitors for defendant : *Corbould & Grant.*