

ARTHUR H. MURPHY.....SUPPLIANT;

1892

Sept. 1.

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

Sale of Ordnance Lands in Quebec—Cancellation—23 Vic. (P. C.) c. 2, s. 20.

In the year 1876 the suppliant purchased a number of lots at an auction sale of Ordnance land in the city of Quebec. He paid certain instalments and interest thereon amounting in all to a sum of \$2,447.92. Being unable to complete the payments for which he was liable, he applied to the Crown, in 1885, to appropriate the money paid by him to the purchase of three particular lots,—Nos. 19, 38 and 39. This the Crown consented to do, and upon an adjustment of the account there was found to be a sum of \$73.92 due to the suppliant, which, by mutual arrangement, was appropriated to the purchase of another lot (No. 100), leaving a balance then due to the Crown of \$126.08. When, however, the suppliant came to pay this balance and get his patents for the four lots, he was informed that lot 19 would probably be required for certain military purposes. He then tendered the balance due to the proper officer of the Crown in that behalf, but it was declined. Patents for lots 38, 39 and 100 were subsequently issued to suppliant, and nothing further was done until 1886, when the Crown resumed possession of lot 19, which was followed up by an attempted cancellation of the sale of the lot under 23 Vic. (P.C.) c. 2 on the ground that as the balance due on the purchase had not been paid the terms and conditions of the sale had not been complied with.

Held, that the sale was not duly cancelled, that the suppliant had forfeited none of his rights under the sale, and was entitled to damages equal to the value of the lot at the time the Crown resumed possession thereof.

Quære:—Has the Deputy Minister of the Interior the right to exercise the powers of cancellation vested in the Commissioner of Crown Lands by the 20th section of the Act of the Province of Canada, 23 Vic. c. 2?

PETITION of right for damages arising from an alleged expropriation of land.

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 v.
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 Reasons
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The facts of the case are recited in the judgment.

June 28th, 1892.

Code and Stafford for suppliant ;

Hogg, Q.C., for respondent.

BURBIDGE, J. now (September 1st, 1892) delivered judgment.

The suppliant, by his petition, claims \$6,000 damages for the expropriation of lot No. 19 on the Grande Allée, in Montcalm Ward, in the city of Quebec. At the trial no evidence of expropriation proceedings was tendered, and I allowed the suppliant to amend the petition by setting up a claim for breach of an agreement by the Crown to sell to him the said lot.

It appears that in the year 1876, at an auction sale in Quebec of certain Ordnance lands, the suppliant purchased a number of lots of which he was put in possession and on which he paid certain instalments and interest thereon, amounting in all to the sum of \$2,447.92. Being unable to complete the payment for which he was liable, he applied to the Crown, in 1885, to appropriate the money paid by him to the purchase of three lots designated by the numbers 19, 38 and 39, agreeing, at the same time, to bear a proportion of the expenses of the sale. This application was granted, and, upon an adjustment of the account, there was found to be a sum of \$73.92 due to the suppliant. As the Crown declined to return this balance, he was allowed to select a lot, number 100, the value of which was \$200, upon agreeing to pay the difference of \$126.08. When, however, he came to pay the balance and get the patents for the four lots, he was made aware that it was probable that lot 19 would be required for military purposes in connection with the Drill Shed at Quebec. At this time he had with him

the balance of \$126.08 and offered to pay it to the proper officer, but, pending a decision as to whether or not the lot would be required for military purposes, the Crown officer declined to accept the money, and the matter, apparently by mutual consent, remained in abeyance. The patents for lots Nos. 38, 39 and 100 were duly issued. In 1886 the Crown resumed possession of lot 19, and on the 21st July, 1887, without any notice or intimation to the suppliant, the sale of the lot was attempted to be cancelled under the authority of the 20th section of the Act of the Legislature of the Province of Canada, 23 Vic. chapter 2, on the ground that, as this sum of \$126.08 had not been paid, the terms and conditions of sale had not been complied with.

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The principle question in this case is as to whether or not this cancellation was effective for the purposes for which it was intended. Apart altogether from any question of the right of the Acting Deputy Minister of the Interior, in July, 1887, to exercise, in respect of the sale of the lot in question, the powers conferred by the statute mentioned upon the Commissioner of Crown Lands, the facts are that the sum of \$126.08 was not due in respect of lot 19, but was due either on lot 100, which is probably the correct view to take of the evidence, or in respect of the four lots; that the suppliant prior to the attempted cancellation had offered to pay the amount, and was ready at any time to do so; and that the true reason for the proposed cancellation was not the non-payment of the sum mentioned, but the fact that the lot was required for the public use. Under these circumstances I have no doubt that the sale was not duly cancelled, that the suppliant forfeited none of his rights, and that he is entitled to damages equal to the value of the lot in 1886,—which I assess at the sum of

1892 \$1,365. From this amount there should be deducted
MURPHY the sum of \$126.08, which it was agreed should be set
v. THE off against the value of the lot.
QUEEN. There will be judgment in favour of the suppliant
Reasons for Judgment. for the sum of \$1,238.92 and costs.

Judgment accordingly.

Solicitors for suppliant: *McIntyre, Code & Orde.*

Solicitors for respondent: *O'Connor, Hogg & Balderson.*
