

THE KING ON THE INFORMATION OF }
 THE ATTORNEY-GENERAL OF CANADA } PLAINTIFF ;

1901
 Dec. 11.

AND

DENNIS REGINALD HARRIS, AND
 HARRY DALLAS HELMECKEN,
 TRUSTEES OF THE ESTATE OF JAMES }
 WILLIAM DOUGLAS } DEFENDANTS.

*Expropriation—Possession by officers of the Crown of lands not expropriated
 —Taking of highway—Rifle range—Damages.*

Defendants complained that possession of certain lands, not covered by the plan and description filed by the Crown in an expropriation proceeding, had been taken by the officers of the Crown, and claimed compensation therefor.

Held, that the right to recover compensation must be limited to lands actually mentioned in the plan and description filed, and to the injurious affection of other lands held therewith.

2. The defendants' predecessor in title in laying off into lots the land of which a portion was taken from the defendants by the Crown, left a roadway between the land so divided and the top of the land adjacent to the sea. This roadway had been used by the public, and work had been done upon it by the municipal authorities. The land between that so taken and the sea was not included in the plan and description filed ; but the Crown closed up the roadway and from the land taken from the defendants opened another in lieu thereof.

Held, that the defendants were not entitled to compensation in respect of the taking of such roadway.

3. Where property adjoins a rifle range, the site of which has been expropriated from the lands of the owner of such adjacent property, he is entitled to compensation for the damages arising from the use of such rifle range.

INFORMATION for the expropriation of certain lands required for the purposes of a rifle range near Victoria, B.C.

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

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October 2nd, 1901.

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Argument
of Counsel.

The case was heard at Victoria, B.C.

W. D. Helmcken K.C. for the defendants, cited *Mayor of Montreal v. Brown* (1); *Paint v. The Queen* (2); *Lefebvre v. The Queen* (3); *Stebbing v. Metropolitan Board of Works* (4); *Cowper Essex v. Acton* (5); *Letourneux v. The Queen* (6); R. S. B. C. c. 111, sec. 66.

A. E. McPhillips, K.C. followed for the defendants, and cited *Re Ontario & Quebec Railway Co. and Taylor* (7); *Penny v. Penny* (8); *Moore v. Woodstock Woollen Mills Co.* (9).

A. F. R. Martin, for the plaintiff, cited *American and English Encyclopedia of Law* (10).

THE JUDGE OF THE EXCHEQUER COURT now (December 11th, 1901), delivered judgment.

The questions at issue are:

1. Whether the sum of eight thousand three hundred and sixty dollars mentioned in the sixth paragraph of the information, as amended at the trial, is sufficient compensation for the value of the lands taken, as therein set out, for a rifle range near the City of Victoria, in the Province of British Columbia, and for damages occasioned by the taking, and by reason of other lands of the defendants being injuriously affected by the taking of such lands for the purposes mentioned; and

2. Whether the defendants are entitled to compensation or damages in respect of lands mentioned in the second paragraph of the statement in defence, and

(1) 2 App. Cas. 168.

(2) 2 Ex. C. R. 149.

(3) 1 Ex. C. R. 121.

(4) L. R. 6 Q. B. 37.

(5) 14 App. Cas. 153.

(6) 7 Ex. Ch. 1.

(7) 6 Ont. R. 338.

(8) 37 L. J. Ch. 340.

(9) 29 S. C. R. 627.

(10) 2nd ed. vol. 9, pp. 21, 73.

lying between those taken and high-water mark, alleged to contain about three and one-third acres.

With reference to the first question I find under the evidence that the amount offered is sufficient compensation for the value of the lands taken, with a fair allowance for the compulsory taking, with probably a few hundred dollars to the good. As to whether or not the lands held with those taken, and situated to the north thereof, are injuriously affected, there is a difference of opinion among the witnesses. But I agree with those who think that the taking of the lands in question for the purposes of a rifle range has injuriously affected the lands of the defendants to the north of and adjacent to such lands, and in respect thereof, and the lands taken, I would increase the compensation to nine thousand three hundred and fifty dollars.

With reference to the second question I am of opinion that the defendants are not entitled to any compensation or damages for the lands to the south of those taken and lying between such lands and high-water mark, described in the second paragraph of the statement of defence. In the first place these lands are not included in those taken. They are outside of the lands described in the plan and description filed; and although the Crown's officers may have taken possession of them, that would not, even if the defendants owned them, give them a right to recover their value in this proceeding, which must be limited to the lands taken and to the injurious affection of other lands held therewith.

The defendants' predecessor in title in laying off into lots the land of which a portion was taken, left a roadway between the land so divided and the top of the bank adjacent to the sea. A reference to exhibit number four will make this clear. South of the lands, a portion of which was taken, is shewn a roadway to

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the top of the bank, and then below and at the foot of the bank is the sea. This way has been used, and work has been done on it, by the city. This land between that taken and the sea was not included in the plan and description filed; but the Crown closed up the road, and from the land taken from the defendants opened another road in lieu thereof. Not having been taken, the defendants cannot, as has been said, recover its value. But even if it had been taken with the other lands in question, the defendants could not, I think, have recovered anything in respect of it. By reason of the act of their predecessor in title and what had happened it was of no value to them, and the case, as to that falls within the rules laid down in *Stebbing's Case* (1), and followed in *Paint's Case* (2). For similar reasons nothing could be recovered because this land was thought to be injuriously affected by the taking of the adjacent land for the purposes mentioned.

There will be a declaration that the lands described in the information are vested in His Majesty the King. There will also be a declaration that the sum of nine thousand three hundred and fifty dollars is a sufficient compensation therefor and for all damages to lands held therewith occasioned by reason of such taking for the purposes mentioned. On that sum interest at the rate of five per centum per annum will be allowed from the sixteenth day of November, 1900. Such sum and interest will be payable to the defendants on giving the Crown a good acquittance for the same from themselves and any other person having any claim to, or interest in, such compensation or damages, and leave is reserved to apply to the court in case any question in respect thereto arises.

(1) L. R. 6 Q. B. 37.

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

The defendants are entitled to their costs of the issue as to the sufficiency of the sum of eight thousand three hundred and sixty dollars offered.

The Crown is entitled to the costs of the issue in respect of the lands mentioned in the second paragraph of the statement in defence.

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Judgment accordingly.

Solicitors for plaintiff: *Langley & Martin.*

Solicitors for defendants: *Drake, Jackson & Helmcken.*
