

1898  
 Mar. 14.

WILLIAM DRURY, TRUSTEE OF THE }  
 ESTATE OF CHARLES DRURY (DE- } SUPPLIANT;  
 CEASED) .....

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

*Expropriation—Compensation—Interest—When it begins to run.*

Interest may be allowed from the date of the taking of possession of any property expropriated by the Crown, even if the plan and description be not filed on that date.

**PETITION OF RIGHT** for compensation for lands taken for a public work.

By his petition of right the suppliant alleged *inter alia* the following facts:—

“On the twentieth day of June, A.D. 1884, and from that time down to the day of the date of this petition, Her Majesty the Queen was the owner and in possession of certain lands and tenements, railway tracks, sidings, railway yards and other works situate in the then cities of Saint John and Portland, now the City of Saint John, in the city and County of Saint John and Province of New Brunswick, being a portion of the Intercolonial Railway, a public work of the Dominion of Canada.”

“On the said twentieth day of June, A.D. 1884, and from that time till the day of the date of his death, Ward Chipman Drury, as trustee under the last will and testament of the said late Charles Drury, was the owner in fee simple of three certain lots, pieces and parcels of land situate in the said parish of Portland, now the City of Saint John.”

On the twenty-first day of February, A.D. 1880, the said late Charles Drury departed this life seized in fee simple of the land in question.

That the said Ward Chipman Drury departed this life on the ninth day of August, A. D. 1891, having first by his last will and under and by virtue of the powers and provisions contained in the last will and testament of the said late Charles Drury, appointed your suppliant, the above named Charles William Drury, trustee of the last will and testament of the said late Charles Drury, and did devise and bequeath to him the Trust estate of the said late Charles Drury, to hold the same to him the said late Charles William Drury, his heirs, executors, administrators and assigns, upon the trusts in said will of the said late Charles Drury, expressed and contained, or such of them as were then subsisting and capable of taking effect."

Some time previous to the said twentieth day of June, A. D. 1884, Her Majesty, the Queen entered upon and took possession of a portion of the three lots and land and premises above mentioned, and afterwards to wit, on the nineteenth day of December, in the year of our Lord, 1888, Her Majesty the Queen, under and by the provisions of *The Expropriation Act*, duly and regularly took for the use of Her said Majesty the Queen the portion of the said lands and premises so occupied or in possession of Her said Majesty the Queen, as aforesaid, and did deposit as of record, in the office of the Registrar of Deeds in and for the county of the said City and County of St. John, a plan and description of said land and premises so taken as aforesaid and has since maintained and operated on the lot of land, so taken as aforesaid, a railway or siding being a part of the said Intercolonial Railway of Canada.

By reason of the taking of the lands mentioned and the laying, maintaining and operating of said railway or siding by Her said Majesty the Queen, as aforesaid, the remaining portions of the said three lots of land

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of your suppliant have been injuriously affected and thereby a claim for damages has accrued to your suppliant.”

These allegations were established by the evidence

March 1st, 1897.

*J. D. Hazen Q.C.* and *E. P. Raymond* for the suppliant;

*H. A. McKeown* for the respondent.

THE JUDGE OF THE EXCHEQUER COURT now (March 14th, 1898) delivered judgment.

Apart from the question of interest the sum of one thousand dollars which the respondent has offered to pay in satisfaction of the suppliant's claim for damages in this action, is I think sufficient compensation for the lands taken and for damages. Although it is not so stated in the pleadings, the offer to pay that sum was, I understand, intended to cover interest to the date of the offer to pay. That would in round numbers represent \$650 for damages, and \$350 for interest, or \$550 for damages and \$450 for interest, according as to whether interest was calculated from December, 1888, or May, 1884. In neither case, according to my appreciation of the evidence, would the damages be sufficient. I am satisfied that the sum of one thousand dollars, apart from interest, represents very fairly the compensation that should be paid in this case. There are higher estimates by witnesses whose opinions are entitled to consideration, and there are lower, but that sum seems to me to be fair and reasonable.

As to the interest it is claimed in the petition from June 20th, 1884, but an amendment was allowed by which a claim was made on part of the compensation money from 1876. I am of opinion to allow it from May 1st, 1884, the date when the city gave up posses-

sion of the lot of land on which the railway formerly ran. That will give the suppliant one thousand dollars for compensation for the lands taken and for damages to other lands formerly held therewith, and eight hundred and thirty-two dollars and eleven cents for interest to date.

There will be judgment for the suppliant for \$1832.11 and for costs.

*Judgment accordingly.*

Solicitors for the suppliant: *Hazen & Allen.*

Solicitor for the respondent: *H. A. McKeown.*

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