

1919  
March 17.

IN THE MATTER OF THE PETITION OF RIGHT OF  
 JOHN GEORGE McCARTHY, JAMES MARMA-  
 DUKE McCARTHY, AND OF DAME LOUISE C.  
 McCARTHY, WIDOW OF THE LATE WILLIAM G.  
 WARNER, ALL THREE IN THEIR QUALITY OF TESTA-  
 MENTARY EXECUTORS UNDER THE LAST WILL AND  
 TESTAMENT OF THE LATE DANIEL McCARTHY, AND  
 THE FIRST TWO IN THEIR QUALITY OF TESTAMENTARY  
 EXECUTORS UNDER THE LAST WILL AND TESTAMENT  
 OF THE LATE JOHN McCARTHY,

SUPPLIANTS;

AND

HIS MAJESTY THE KING,

RESPONDENT.

*Expropriation — Shipyard — Compensation — Valuation — Petition  
 of right.*

*Held*, where the Crown had been in occupation of a piece of land for a certain time previous to its expropriation, the compensation for such occupation was ascertained by accepting the value thereof as established in the expropriation proceedings and by allowing legal interest thereon.

**P**ETITION OF RIGHT to recover for the use and occupation of land in an expropriation by the Crown.

Tried before the Honourable Mr. Justice Audette, at Montreal, January 8 and 30, 1919.

*D. R. Murphy*, K.C., *A. Perrault*, K.C., and *P. St. Germain*, K.C., for suppliants.

*E. Lafleur*, K.C., *E. H. Godin*, K.C., and *F. Lefebvre*, K.C., for respondent.

AUDETTE, J. (March 17, 1919) delivered judgment.

The suppliants, by their petition of right, seek to recover the sum of \$80,000, with interest and costs.

alleged to represent the value of the use and occupation of their Sorel shipyard, since the 31st December, 1912, under the notice of cancellation of a running lease. This amount to cover the rent for the years 1913, 1914, 1915 and 1916.

The facts of this case are not only interwoven with, but are really so much the same as the facts in the action instituted by way of information by the Crown for the expropriation of this shipyard at Sorel, that at the opening of the trial an order was made, upon motion on behalf of the suppliants, the Crown acquiescing in the same, declaring the evidence, *viva voce* and documentary, in the case of *The King v. John G. McCarthy et al.*,<sup>1</sup> common to this case, so far as applicable.

The petition of right action is but a corollary to the expropriation case, with respect to the period running from the 31st December, 1912, to the date of the expropriation, 18th December, 1915.

It is unnecessary to pass upon the question of the validity of the lease and the validity of its cancellation, since both parties have, at trial, accepted my view relating to the manner suggested by me at trial of fixing the compensation herein, and that is by treating the matter as if the Crown, under sec. 22 of the *Expropriation Act*, had taken possession of this property on the 1st January, 1913, instead as of the date of the deposit of the plan and description, on 18th December, 1915. The compensation should be ascertained by taking the full value of the property with the area originally mentioned in the information of the expropriation case and accepting the value found by the judgment in the expropriation

1919

McCarthy.

v.

THE KING.

Reasons for  
Judgment.

<sup>1</sup> Ante, p. 410.

1919  
 MCCARTHY,  
 v.  
 THE KING  
 Reasons for  
 Judgment.

case, under its ratio for the value of the land per foot.

Therefore, to arrive at the capital upon which interest at 5% should run from the 1st January, 1913, to the 18th December, 1915, we will first take the already ascertained value of the shipyard with its restricted area, as follows:

|                    |             |
|--------------------|-------------|
| Land. . . . .      | \$19,076.85 |
| Buildings. . . . . | 18,250.00   |
| Wharves. . . . .   | 16,354.10   |
|                    | <hr/>       |
|                    | \$53,680.95 |

To this should be added the abandoned area of 143,163 square feet, which, at 5 cents a foot, would represent. . . . . 7,158.15

Making a total of. . . . . \$60,839.10

Upon this amount of \$60,839.10 interest will run at 5%, as already mentioned, between the 1st January, 1913, to the 18th December, 1915. The interest upon the same amounts to the sum of \$9,009.19, which represents a fair and just compensation for the use and occupation of the land, arrived at under the provisions of sec. 31 of the *Expropriation Act*.

This amount may, at first sight, appear large in view of the rent that was formerly paid under the leases; but it should be approached both with the consideration that the government occupied a larger area than that covered by the leases, and also under the circumstances mentioned in Exhibit F.

It is unnecessary to decide whether this action by petition of right was necessary and whether the matter covered thereby could not have been made

part of and decided by the expropriation case; it will suffice to say that counsel for the claimants stated this action was taken to prevent the statute of limitation, or rather prescription, becoming a bar to the recovery of the back rent.

Having, however, in the result treated the period covered by the petition of right as if it formed part of the expropriation case, interest cannot be allowed upon the interest already allowed.

In so far as necessary to the determination of all the questions in controversy between the parties in the two actions, these reasons may be read with and taken as part of the reasons for judgment in the expropriation case. Judgment in the latter case being rendered on the same date as in the present case.

Judgment will be entered declaring that the suppliants are entitled to recover, from the respondent, the said sum of \$9,009.19 and costs.

*Judgment for suppliants.*

Solicitors for suppliants: *Murphy, Perron, Raymond & Gowin.*

1919

MCCARTHY  
v.  
THE KING.

REASONS FOR  
Judgment.