

BETWEEN:

ETHEL V. GRAYSON .....SUPPLIANT;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

1959  
Feb. 9-10  
Feb. 13

*Crown—Petition of Right—Expropriation—Expropriation Act, R.S.C. 1952, c. 106, ss. 9(1), 23, 34—The Land Titles Act, R.S.S. 1953, c. 108, s. 96—Expropriation complete on filing plan and description of property—Canada has most arbitrary system of expropriation—Compliance with requirements of section 9(1) of Expropriation Act essential to validity of expropriation.*

The suppliant brought a petition of right for compensation for the alleged expropriation of a portion of her property consisting of land along the shore of Buffalo Pound Lake near Moose Jaw in Saskatchewan and two summer cottages on a point jutting into the lake. Counsel for the suppliant sought to prove the expropriation by filing two documents. The first was a plan of survey under the heading "Buffalo Pound Lake Storage Project", showing the areas required to be flooded in order to raise the level of the lake, including the portion of the suppliant's land required for the purpose outlined on the plan in red. This plan was approved by certain officers of the Province of Saskatchewan and also carried the signature of the Superintendent of Water Development under the Prairie Farm Rehabilitation Act. The plan was filed under section 96 of *The Land Titles Act* of Saskatchewan in the Land Titles Office at Moose Jaw. The other document was a Notice of Expropriation giving notice that the area required for the Buffalo Pound Lake Reservoir and Right of Way as marked on the plan of survey had been taken by and was vested in Her Majesty the Queen in Right of Canada.

On the filing of these documents counsel for the respondent stated that the Department of Justice had discovered that there was substantial doubt whether the requirements of section 9 of the *Expropriation Act* had been complied with, that the land titles office had refused to accept further plans and descriptions on the ground that titles had vested in the Crown by the issuance of certificates of title and that the Crown felt duty bound to put the matter before the Court so that it might consider whether there was an expropriation which could support a judgment authorizing payment under section 34 of the *Expropriation Act*.

*Held:* That under section 9(1) of the *Expropriation Act* a man's land can be lawfully taken from him without his consent, and even without his knowledge or any notice to him, merely by the deposit of record in the proper land titles or land registry office of a duly signed plan and description of the land, that this may be done whenever the Minister of the department charged with the construction and maintenance of the public work for which the land is to be taken deems it advisable to do so, that on such deposit the expropriation of the land is complete without any further act by anyone, that whatever right, title or interest the former owner, or any other person had in or to the land is immediately extinguished and the land is automatically vested in Her Majesty the Queen, free and clear from any claims to or encumbrances upon it and that all that is left to the former owner of the

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land, or a person having a claim to or an encumbrance upon it, is a claim to compensation, which by section 23 of the Act is made to stand in the stead of the land.

2. That Canada has the most arbitrary system of expropriation of land in the whole of the civilized world.
3. That since a man's land can be validly taken from him by compliance with the requirements of section 9 of the *Expropriation Act*, no matter how arbitrary its provisions are, it is essential to the validity of an expropriation under the Act that its requirements have been strictly complied with and that if they have not been so complied with the purported expropriation is invalid.
4. That in the present case the requirements of the section have not been complied with.
5. That it is doubtful whether the plan of survey referred to is the kind of plan contemplated by the section, that the plan contemplates the registration of the portion of the property that is outlined on the plan in red on the application of the Superintendent of Water Development under the *Prairie Farm Rehabilitation Act* and there is no authority under section 9 of the *Expropriation Act* for the deposit of a plan having such effect.
6. That the Notice of Expropriation was not in any sense a description of the land within the requirements of the section.
7. That, since the requirements of section 9 have not been complied with, there has not been a valid expropriation of any portion of the suppliant's lands and that, since the portion of the suppliant's land that was alleged to have been expropriated was not in fact expropriated, she is still its owner and not entitled to any compensation for it and there is no basis on which to found her petition of right.
8. That the suppliant is not entitled to any of the relief sought by her.

#### PETITION OF RIGHT.

The petition was heard by the President of the Court at Regina.

*L. McTaggart, Q.C.*, and *R. J. Rushford* for suppliant.

*R. L. Brownridge, Q.C.*, and *J. G. Schollie* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT now (February 13, 1959) delivered the following judgment:

In her petition of right the suppliant claims the sum of \$23,475 on the ground that a portion of her property was expropriated by the respondent on May 6, 1956, under the *Expropriation Act*, R.S.C. 1952, Chapter 106, and that no compensation has been paid to her for its loss.

On May 6, 1956, and for some time prior thereto, the suppliant was the registered owner of the following land namely:

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All that portion of Section Nine (9) in Township Nineteen (19) in Range Twenty-five (25) West of the Second Meridian in the Province of Saskatchewan, in the Dominion of Canada, which is not covered by the waters of Buffalo Lake, containing Four Hundred and Seventy acres (470) more or less, according to a Plan dated the 31st day of March, A.D. 1883 and of Record in the Department of the Interior, approved and RESERVING unto the Canadian Pacific Railway all coal that may be found within upon or under said land and the right to enter and remove same, as reserved in Transfer T.5724. Minerals included, except coal.

This land comprises the whole of the South West Quarter of the section, those portions of the South East, North East and North West Quarters that lie south of the south shore of Buffalo Pound Lake and a small portion of the North East Quarter that lies north of the north shore. The remainder of the section is covered by the waters of the Lake.

It is a portion of the land so described that is alleged to have been expropriated on May 6, 1956. Counsel for the suppliant sought to prove the expropriation by filing two documents. One of these is a plan of survey, dated October 25, 1955, which was filed as Exhibit 3. It is described under the heading "Buffalo Pound Lake Storage Project" as a plan showing the survey of the land required for the flooded area in the lands specified therein, including the South East Quarter and the North Half of Section 9 in Township 19 in Range 25, West of the 2nd Meridian, being part of the land owned by the suppliant. The plan shows the areas on each side of Buffalo Pound Lake that are required to be flooded in order to raise the present level of the Lake to the proposed higher one. Included in such areas are the portions of the suppliant's land that are required for this purpose. They are outlined on the plan in red. The plan carries the certificate of M. R. Skelton, a Saskatchewan land surveyor, that the survey represented by the plan was made by him and that the plan is correct and true and the certificate is signed by him. The plan was approved by certain officers of the Province of Saskatchewan, namely, the Chief Engineer of the Water Rights Branch of the Department of Agriculture on November 2, 1955, the Director of Lands of the Department of Agriculture on November 4,

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1955, and the Director of Surveys of the Department of Highways and Transportation on November 8, 1955. The plan also carries the signature of the Superintendent of Water Development under the *Prairie Farm Rehabilitation Act (Canada)* as Applicant under the date October 27, 1955. I should also set out the Legend on the plan. It is as follows:

Distances are in feet and decimals thereof. Iron posts 30" ×  $\frac{3}{4}$ " were planted at all traverse stations, marked R/W with the number of the station and are shown by a hollow black circle. Monuments found are shown by a black diamond. Monuments re-established are shown by a vermilion square.

Portions to be registered under the plan are outlined in red.

I have already pointed out that the portions of the suppliant's property required to be flooded are outlined on the plan in red. The plan was filed under section 96 of *The Land Titles Act* of Saskatchewan, R.S.S. 1953, Chapter 108, in the Land Titles Office at Moose Jaw, in the Province of Saskatchewan on March 21, 1956, as No. EX774.

The other document on which counsel for the suppliant relied is described as a "Notice of Expropriation". It was filed as Exhibit 2. I set it out in full as follows:

In the Matter of the Expropriation Act, Being Chapter 106, of the Revised Statutes of Canada, 1952.

#### NOTICE OF EXPROPRIATION

Lands to be acquired for the purpose of a reservoir and right of way in connection with the Buffalo Pound Lake Project in the Province of Saskatchewan.

**TAKE NOTICE** that the area required for the Buffalo Pound Lake Reservoir and Right of Way as marked out in red on a plan of survey registered as No. EX. 774, the possession of which has been taken by and for Her Majesty the Queen in Right of Canada for the purpose of a reservoir and right of way is vested in Her Majesty the Queen, Her Heirs and Successors in Right of Canada, by virtue of the provisions of the Expropriation Act being Chapter 106 of the Revised Statutes of Canada, 1952.

G. M. Taggart  
 Deputy Minister of Agriculture

To: The Registrar  
 Moose Jaw Land Registration District  
 Moose Jaw, Saskatchewan.

and

To Whom it May Concern

This notice was registered in the Land Titles Office for the Moose Jaw Land Registration District at Moose Jaw in Saskatchewan on May 9, 1956, as No. EB 6645

On the filing of these documents counsel for the respondent informed the Court that he had been instructed by the Deputy Attorney General of Canada to make a statement to the Court. It was to the following effect, namely: that after the petitions of right had been received the Department of Justice discovered that there was substantial doubt whether the plans and descriptions complied with the requirements of section 9 of the *Expropriation Act*; that no issue was made of this point in the Crown's statement of defence on the assumption that the matter could be corrected by filing confirming plans and descriptions; that the land titles office had wrongfully, in the Department's view, refused to accept further plans and descriptions on the ground that titles had vested in the Crown by the issuance of certificates of title; and that the Crown now felt duty bound to put the matter before the Court in view of the decision in *The King v. Hooper*<sup>1</sup> so it might consider whether there was an expropriation which could support a judgment authorizing payment under section 34 of the *Expropriation Act*.

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This statement raised a question of great importance, for if the requirements of section 9 of the *Expropriation Act* have not been complied with the suppliant's property has not been expropriated, with the result that she is still its owner and is not entitled to any compensation for its loss.

The relevant provisions of section 9 of the *Expropriation Act* must now be considered. Subsection (1) of the section reads as follows:

9. (1) Land taken for the use of Her Majesty shall be laid off by metes and bounds; and when no proper deed or conveyance thereof to Her Majesty is made and executed by the person having the power to make such deed or conveyance, or when a person interested in such land is incapable of making such deed or conveyance, or when, for any other reason, the Minister deems it advisable so to do, a plan and description of such land signed by the Minister, the deputy of the Minister or the secretary of the department, or by the superintendent of the public work, or by an engineer of the department, or by a land surveyor duly licensed and sworn in and for the province in which the land is situate, shall be deposited of record in the office of the registrar of deeds for the county or registration division in which the land is situate, and such land, by such deposit, shall thereupon become and remain vested in Her Majesty.

Under these provisions a man's land can be lawfully taken from him without his consent, and even without his

<sup>1</sup> [1942] Ex. C.R. 193.

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knowledge or any notice to him, merely by the deposit of record in the proper land titles or land registry office of a duly signed plan and description of the land. This may be done whenever the Minister of the department charged with the construction and maintenance of the public work for which the land is to be taken deems it advisable to do so. On such deposit the expropriation of the land is complete without any further act by anyone. Whatever right, title or interest the former owner, or any other person, had in or to the land is immediately extinguished and the land is automatically vested in Her Majesty The Queen free and clear of any claims to or encumbrances upon it. All that is left to the former owner of the land, or a person having had a claim to or an encumbrance upon it, is a claim to compensation, which by section 23 of the Act is made to stand in the stead of the land. And I might add here that the settlement of claims to compensation is frequently unconscionably delayed.

I have frequently called attention to these provisions of the law and stated that Canada has the most arbitrary system of expropriation of land in the whole of the civilized world. I am not aware of any other country in the civilized world that exercises its right of eminent domain in the arbitrary manner that Canada does. And, unfortunately, the example set by Canada has infected several of the Canadian provinces in which a similar system of expropriation has been adopted.

It is obvious that since a man's land can be validly taken from him by compliance with the requirements of section 9 of the *Expropriation Act*, no matter how arbitrary its provisions are, it is essential to the validity of an expropriation under the Act that its requirements have been strictly complied with. If they have not been so complied with the purported expropriation is invalid.

In the present case the requirements of the section have not been complied with. It is doubtful whether the plan filed as Exhibit 3 is the kind of plan contemplated by it. This doubt is not based on the fact that the plan was filed under a section of *The Land Titles Act* of Saskatchewan. That would not by itself necessarily affect its validity as a plan under section 9 of the *Expropriation Act* if it were otherwise a plan of the lands to be taken for the proposed

public work. The objection to it is that it seems to contemplate the registration of the portion of the property that is outlined on the plan in red on the application of the Superintendent of Water Development under the *Prairie Farm Rehabilitation Act*. There is no authority under section 9 of the *Expropriation Act* for the deposit of a plan having any such purported effect. But even if it could be validly argued that the plan meets the requirements of the section, so far as a plan of the land is concerned, that would not be enough, for the section requires the deposit of a description as well as a plan of the land. And I have no hesitation in finding that no description of the land, as required by the section, was ever deposited. The notice of expropriation filed as Exhibit 2 is not in any sense a description of the land within the requirements of the section. It is merely a statement of a conclusion that the land had been expropriated and been vested in Her Majesty The Queen by virtue of the *Expropriation Act* and it was made on the assumption that the requirements of the Act had been complied with, an assumption that was unwarranted.

Consequently, I must find that, since the requirements of section 9 have not been complied with, there has not been a valid expropriation of any portion of the suppliant's land, from which it follows that, since the portion of the suppliant's land that was alleged to have been expropriated was not in fact expropriated, she is still its owner and is, therefore, not entitled to any compensation for its loss and there is no basis on which to found her petition of right.

When counsel for the respondent had made his statement to the Court I expressed the opinion that I have just stated, but counsel for the suppliant requested that I should hear the evidence as to the value of the property alleged to have been expropriated. I did so for the reason that all the witnesses were present and some of them had come from distant places and also for the reason that if there should be an appeal from this judgment and it should be held on such appeal that the requirements of section 9 of the *Expropriation Act* had been complied with my estimate of the value of the property in question would stand for what it might be worth and it would not be necessary to refer the matter back to me for trial. On that understanding I heard the evidence of the witnesses as to the value of the said property.

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[Here the President reviewed the evidence of the witnesses as to the value of the portion of the suppliant's property alleged to have been expropriated and estimated its value at \$11,000 and continued:]

This is, in my judgment, the top limit of the amount of the compensation to which the suppliant would be entitled if the expropriation were valid and the largest award that I would make accordingly. In my opinion, it would fully cover all the factors of the value of the property to the suppliant as at May 9, 1956, to which she could reasonably be entitled.

Since the suppliant has been in undisturbed possession of the property without paying any rent she would not be entitled to any interest.

And this is not a case for any additional allowance for compulsory taking within the ambit for such an allowance set by the unanimous judgment of the Supreme Court of Canada in *The King v. Lavoie*<sup>1</sup>.

But, of course, in view of my finding that the requirements of the law for a valid expropriation of the property have not been complied with I cannot make any award of compensation that could lawfully be paid out of the Consolidated Revenue Fund pursuant to section 34 of the *Expropriation Act*.

It follows, for the reasons given, that there must be judgment declaring that the suppliant is not entitled to any of the relief sought by her in her petition of right. But, in view of the unusual circumstances of the case, neither party will be entitled to costs.

*Judgment accordingly.*

<sup>1</sup> (December 18, 1950, unreported).