

1921
 May 3.

HIS MAJESTY THE KING PLAINTIFF;

AND

ZEPHIRIN MOREAU DEFENDANT.

*Expropriation—Improvement on property subsequent to notice thereof—
 Compensation.*

Held: Where a person, notwithstanding that he was fully aware of the expropriation of part of his land by the Crown, continues to erect a building thereon, he does so at his own risk and peril, and must assume the consequences of his act; and in such a case, the court should not allow him any compensation for anything done after the expropriation.

Chambers v. London, Chatham & Dover Ry. (1863) 8 L.T. 235; *The King v. Thompson*, 18 Ex. C.R. 23; and *The King v. Lyncht's, Limited*, 20 Ex. C.R. 158, referred to.

INFORMATION exhibited by the Attorney-General for Canada to have the easement and right to flood certain lands expropriated under the Expropriation Act valued by the Court.

March 23rd, 1921.

Case was begun before the Honourable Mr. Justice Audette, at Haileybury, and on April 22nd, 1921, was concluded at the city of Ottawa.

R. V. Sinclair, K.C., and Louis Cousineau, for plaintiff.

E. B. Devlin, K.C., and J. W. Ste. Marie, K.C., for defendant.

The facts are stated in the reasons for judgment.

AUDETTE J. now (May 3rd, 1921) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that the right to flood the land described in the information and belonging to the defendant, was, under the provisions of the Expropriation Act, taken and expropriated for the purposes of the construction and operation of the Quinze Lake Dam and Reservoir, a public work of Canada, by depositing, both on the 26th October, 1917, and the 26th March, 1920, plans and descriptions of the said lands in the office of the Registrar of Deeds for the County or Registration Division of the County of Temiscaming.

The reason of the deposit of the amended plan and description of the said lands on the 26th March, 1920, was, as stated at bar, because the description deposited in 1917 was not considered sufficient to comply with the requirements of the Expropriation Act. The two plans are identical.

The date of expropriation will be taken, for all purposes, to be the 26th October, 1917.

The Crown has tendered and by the Information offers the sum of \$1,394.75 as compensation for the expropriation of this right to flood the said land and for all damages resulting from the same.

The defendant by his statement in defence claims the sum of \$7,000.00.

The defendant's title is admitted.

After the conclusion of the hearing of the cases of *The King v. A. Carufel*, under No. 3606, and *The King v. A. Grignon*, under No. 3609, counsel at bar, in the present case, agreed to the following admission, reading as follows, viz.:

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Admission—It is hereby admitted by the defendant that all the general evidence as to value of the different classes of land in the locality in question, as testified to in the cases (viz., No. 3606, *The King v. A. Carufel*, and No. 3609, *The King v. A. Grignon*) shall be common to this case.

And it is admitted by the Crown that all the evidence of a similar nature adduced on its behalf in the two above mentioned cases, shall be common to the present case, the Crown, however, undertaking to file a statement showing the particulars of how their expert witnesses have arrived at the amount of their valuation.

It is further admitted that the plan Exhibit No. 5 herein, which is the particular plan applicable to this case, will be admitted without further evidence and taken as proved.

It is also agreed between counsel for the respective parties that the evidence of Henry H. Robertson given in these two previous cases mentioned under Nos. 3606 and 3609 will be taken as also given in this case, that is according to his own view, of what would be the area of the land flooded.

To avoid unnecessary repetition, the reasons for judgment given this day by me in the case of *The King v. Adelard Carufel*, under No. 3606, are hereby made part hereof and more especially in respect to the general observations respecting the nature of the expropriation, the area taken and the compensation so far as applicable.

The flooded area is admitted.

For the 64.85 acres of bush land affected herein, an allowance of \$5 will be made, namely.....\$

324 25

For the 9·28 acres under cultivation \$60 an acre will be allowed..... 558 80

Now the total area of the farm is 91 acres out of which the Crown will now flood 74·15, leaving a balance of 16·85 acres of which 12·13 is under cultivation and 4·74 would be rock.

The property has been destroyed as a farm and cannot now be used as such. For the damages to 12·13 acres under cultivation \$50 an acre will be allowed (as allowed by the Crown's valuation)..... 606 50

and for the balance of 4·74 the sum of \$5 an acre..... 23 70

as when the defendant purchased the farm, he paid under a measurement including these 4·74 acres—at any rate, I presume so—as it would be done in ordinary cases.

In the autumn of 1916 the defendant started building a house and before the expropriation, he had already dug a cellar and built the basement, including the flooring of the ground flat and for that expenditure I will allow..... 175.00

\$ 1,788.25

He further claims for the building which he continued to erect in face of the expropriation, which was well known to him. He therefore did so at his own risk and peril and by creating a new residence thereon, he assumed the full responsibility of such a course and its consequences, thus waiving in advance any right to complain in respect of the same. *Chambers*

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v. *London, Chatham and Dover Ry. Co.* (1); *The King v. Thompson* (2); *The King v. Lynch's, Limited* (3).

There will be judgment as follows, viz.:

1°. The right to flood the lands in question herein is hereby declared vested in the Crown as of the 26th October, 1917.

2°. The compensation, for the right to so flood the defendant's land and for all damages resulting from the expropriation, is hereby fixed at the sum of \$1,788.25 with interest thereon from the 26th October, 1917, to the date hereof.

3°. The defendant, upon giving to the Crown a good and satisfactory title, free from all hypothecs, mortgages, and incumbrances whatsoever, is entitled to recover from and be paid by the plaintiff the said sum of \$1,788.25 with interest as above mentioned and costs.

Judgment accordingly.

(1) [1863] 8 L.T.235, 11 W.R. 479.

(2) 18 Ex. C.R. 23.

(3) 20 Ex. C.R. 158.
