

IN THE MATTER OF THE PETITION OF RIGHT OF

JOHN MCGOLDRICK.....SUPPLIANT ;

1902

AND

Nov. 17.

HIS MAJESTY THE KING.....RESPONDENT.

*Expropriation of lands—Leasehold property—Tenants' improvements—
Expense of removal to new premises—Compensation.*

The suppliant was tenant of certain buildings and wharves erected upon the lands of which he had acquired possession as assignee of two leases. He there carried on business as a junk-dealer. The terms for which these leases were made had expired at the time of the expropriation of the said lands by the Crown ; but the leases contained a proviso that the buildings and other erections put on the demised premises should be valued by appraisers, and that the lessor or reversioner should have the option of resuming possession upon payment of the amount of such appraisal, or of renewing the leases on the same conditions for a further term not less than three years. No such appraisal had been made, and the suppliant continued in possession of the property as tenant from year to year. The evidence showed that the lessor had no present intention of paying for the improvements and resuming possession of the property.

Held, that in addition to the value of his improvements, the suppliant should be allowed compensation for the value, under all the circumstances, of his possession under the leases at the date of the expropriation.

PETITION OF RIGHT seeking compensation for a lessee's rights in certain lands and premises situated in the City of St. John, N.B., which were taken for the purposes of the Intercolonial Railway.

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

May 20th, 21st and 22nd, 1902.

The trial of the case took place at St. John, N.B.

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September 24th, 1902.

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The case was now argued.

L. A. Currey, K.C., for the suppliant;*E. H. McAlpine, K.C.*, for the respondent.

THE JUDGE OF THE EXCHEQUER COURT now (November 17th, 1902) delivered judgment.

The suppliant brings his petition to recover compensation for his leasehold interest in certain lands and premises situated at the City of St. John, in the Province of New Brunswick, which were taken by the Crown for the use of the Intercolonial Railway. The suppliant was a junk-dealer doing business in a large way, and he occupied these premises in connection with his business. The possession had been acquired under two leases of which he was the assignee, one for twenty years from the 1st of May, 1873, and the other for twenty years from the 1st of November, 1874. It was a condition of each of these leases that the buildings and other erections put up on the premises should be valued by appraisers, and that the lessor or reversioner should have the option of resuming possession upon payment of the amount of such appraisal, or of renewing the lease on the same terms for a further term not less than three years. When the terms mentioned in the leases expired no appraisal was made, and the tenant continued in possession from year to year; but the person at the time entitled to the reversion was willing to renew, and ready at any time to do so.

The Crown has offered to pay the suppliant in respect of his interest the sum of five thousand eight hundred and one dollars and fifty cents (\$5,801.50). This is the amount at which valuator appointed by the Crown appraised the compensation that they

thought should be paid to the suppliant. Of this amount two thousand five hundred dollars was allowed for the buildings on the premises; and one thousand five hundred dollars for the wharves and similar erections. Three hundred and fifty dollars, less a sum of ninety-eight dollars and fifty cents deducted for rent, was allowed for the removal of suppliant's stock; and fifteen hundred dollars to compensate him for his enforced removal from the premises. Acting under advice, the valutors did not put any value on the terms of which the suppliant was possessed. But they thought it was a hardship that he should be put on the street and so recommended that he be allowed the sum of one thousand five hundred dollars mentioned. For the valutors it ought, I think, to be said that they tried to be fair, and I see no good reason to disturb their valuation of the buildings and wharves. But that takes no account of the possession which the suppliant at the time had, and to which he was then entitled. In the case of one lease the year then current had nearly four months to run, and with respect to the other nearly ten months. Then it appears that Mr. Coster who, as agent for the persons entitled, managed the property, was willing at the time to renew; that he had no intention of paying for the improvements; and these are considerations that ought not to be lost sight of in putting a value upon the interest that the suppliant had in the premises in question. They are matters that would no doubt have been taken into account if a person had in July, 1899, been in negotiation with the suppliant for the purchase of his interest in the premises. If we add to these the further consideration that the suppliant did not wish to part with the premises; and that in case he disposed of his interest therein he would have to procure another place in which to carry

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on business and to remove his stock, you have, I think, the principal elements that would, when the lands were taken, have entered into any negotiation for the purchase of the suppliant's interest therein, and which between the purchaser and the seller would have gone to determine the fair value of the suppliant's interest. It is difficult of course, as Mr. Lockhart, one of the witnesses for the Crown stated, to say just what sum would represent such fair value.

There is room for considerable difference of opinion Reference has been made to the fact that Mr. Coster had at the time no intention to pay for the improvements and resume possession of the property; and that he was willing to renew for a term of years at the rent then being paid. That, as I have said, is a consideration to be borne in mind when one is considering what the probable duration of the suppliant's possession would have been if the lands had not been expropriated. But it has another bearing on the case, and an important one, for it goes to show that the possession could not in reality have had the very large value that some of the witnesses put upon it. Mr. Coster is a very capable and intelligent administrator of property of this kind, and if the value of the premises had been as large as one would be led to believe from the evidence of some of the witnesses he would not, I think, have been as ready as he was to renew at the existing rents. No doubt he would be slow to disturb a good tenant doing a good business and paying his rent promptly; and there might be some considerable disparity between the annual value of the possession and the rent being paid before he would exercise the option he had in favour of paying for the improvements and resuming possession. But one would expect a different course of action where that disparity was really very great.

On the whole I am inclined to think that the amount mentioned by Mr. Lockhart is not far out of the way. I am disposed, however, to add something to this estimate in view of the compulsory taking. To the sum of four thousand and fifty dollars, at which the buildings and wharves were valued, I would add two thousand nine hundred and fifty dollars for the value of the suppliant's interest in the premises, apart from such buildings and erections. That gives for compensation to be paid to the suppliant by the Crown the sum of seven thousand dollars. I state it in round figures, because I do not profess to think that value in such cases can be closely determined. That, I think, would have been a fair price to be given and taken in July, 1899, between one who was anxious to buy and one who, being at the time averse to selling, was compelled to sell and to incur the expense of removing his stock and procuring and fitting up a new place of business.

There will be judgment for the suppliant for the sum of seven thousand dollars, and interest from the 7th July, 1899. He is also entitled to the costs of his petition.

*Judgment accordingly.*

Solicitor for the suppliant: *Currey & Vincent.*

Solicitor for the respondent: *E. H. McAlpine.*

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