JAMES GIBB, of London, England, and FRANK ROSS, of the City of Quebec,

SUPPLIANTS; 1914 Nov. 7.

AND

HIS MAJESTY THE KING, ... RESPONDENT.

Expropriation—Abandonment of Public Work—The Expropriation Act sec. 23, sub-sec. 4—The Exchequer Court Act, secs. 19 and 20—Interpretation—Damages.

Upon a fair construction of the language of *The Expropriation Act*, sec. 23, sub-sec. 4, the jurisdiction of the Court is not limited to claims arising out of a partial abandonment of the property but extends to claims for total abandonment as well.

2. Upon expropriation proceedings being taken it is the intendment of the above enactment, so that actions be not multiplied, that the damages are to be assessed once for all in such proceedings; but where the Crown, before judgment, returns the property to the owner, and discontinues the action, so that the damages are prevented from being assessed at all therein, then the owner of the property has a remedy by petition of right under the jurisdiction clauses (secs. 19 and 20) of *The Exchequer Court Act.*

3. The damage or loss in respect of which the Court will assess compensation must arise out of some physical interference with property or with some right incidental thereto, different in kind from that which all the properties in the neighbourhood are subject to, and must be of such a nature as would be actionable but for the statute authorizing the work. Hence, where the surrounding properties had been temporarily enhanced in value by reason of a projected Government work subsequently abandoned, the owner of property, no part of which had been taken, has no claim to compensation because of the abandonment by the Government of the proposed scheme. On the other hand where property has been taken and returned all damages arising out of any interference with the owner's rights in respect of leasing the lands during the period the expropriation was effective is a proper subject of compensation. *The Queen* v. *Murray*, 5 Ex. C. R. 69; *Cedar Rapids Power Co.* v. *Lacoste* (1914) A.C. 569, referred to.

4. For the purposes of a projected public work the Crown expropriated a market place and demolished the buildings thereon in the vicinity of suppliants' property. The Crown had also expropriated the suppliants' property which it subsequently returned to the suppliants.

Held, that suppliants had no right to damages for any depreciation in the value of their property arising from the destruction of the market, as any loss arising to the suppliants was suffered by them in common with the other property owners in the neighbourhood.

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PETITION of Right for compensation arising out of an expropriation of certain lands by the Crown, which were subsequently returned to the owners. The facts are stated in the reasons for judgment.

September 25th, 1914.

The case now came on for hearing before the Honorable Mr. Justice Audette at Quebec.

G. G. Stuart, K.C. for the suppliants contended that the offer by the Crown under the *Expropriation Act* to pay the defendants $61,747.75 for the lands taken in the expropriation proceedings became a contract when accepted by the defendants. This was done by the defendants in their statement of defence. So that while the Crown may possibly have the right in such a case to discontinue the expropriation proceedings, it could not by such discontinuance impair the right of the suppliants to recover the debt so established. The Crown having returned the property to us must pay us the difference between the value of the property as fixed between the Crown and the suppliants by the contract to which I have referred, and the value of the property as it exists today, which has depreciated very considerably. The value of the property for the purposes of this case must be taken to be the value at the time of the expropriation. He cites *Cedar Rapids Power Company* v. *Lacoste* (1). The Court has jurisdiction to hear this petition of right under sections 19 and 20 of *The Exchequer Court Act*. Petition of right is the proper process by which money due under a statutory contract is recoverable from the Crown. He cites *Feather* v. *the Queen* (2) *Clode* on *Petition of Right* (3); *North Shore Ry. Co.* v. *Pion* (4);

(1) (1914) A. C. 569.
(2) 6 B. & S. 257.
(3) p. 90.
(4) 14 A. C. 612.

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The suppliants are entitled to be reimbursed also for their loss in not being able to lease the property.

E. Belleau, K.C., for the respondent, contended that the court only had jurisdiction under sub-section 4 of section 23 of the *Expropriation Act* when part of the lands had been returned to the owner, not when the whole has been returned. That being so the claim here amounts to a substantive claim for damages and is not recoverable upon petition of right under the 19th and 20th sections of the *Exchequer Court Act*, because what the Crown has done here is authorized by the *Expropriation Act*, and for something done under the authority of a statute no claim will arise unless a remedy is given by that or some other statute.

Again, if the claim is to be treated as one in contract arising under the *Expropriation Act*, then it is a contract with a resolutory condition expressed in the statute and the condition having been acted on, by the Crown; in returning the lands, no claim for damages, will lie. On the other hand if the action is one sounding in tort (*délit* or *quasi-délit*) under the statute, then there is no remedy. There would have been no remedy, but for the statute in respect of the expropriation; there is none for damages for an abandoned undertaking. (He Cites *Cedar Rapids Mfg. Co.* v. *Lacoste* (4); *Beven on Negligence* (5); *Robertson's Civil Proceedings against the Crown* (6); *Cripps on Compensation* (7)

(1) 11 A. C. 616.
(2) 10 S. C. R. pp. 354-390.
(3) Vol. 10, p. 26.
(4) (1914) A. C. 571.
(5) 2nd Ed. p. 106.
(6) p. 331.
(7) 5th. ed pp. 298 et seq.

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AUDETTE, J. now (November 7th, 1914) delivered judgment.

On the 2nd October, 1911, the Attorney-General of Canada, under the provisions of sec. 26 of the *Expropriation Act*, exhibited in this Court an information showing that the Crown had expropriated, under the authority of 3 Ed. VII ch. 71, for the purpose of the National Transcontinental Railway, a certain parcel of land belonging to the suppliants herein, which land is now the subject of the present litigation. The property was so expropriated by depositing a plan and description of the same, with the Registrar of Deeds of the City of Quebec, on the 24th January, 1911.

The Crown by such information offered the sum of $61,747.75 as a sufficient and just compensation for the lands so taken, and the defendants (the suppliants in the present case) by their plea filed in that case (under No. 2179) on the 25th October, 1911, among other things, accepted the amount so offered by the said information.

Subsequently thereto, namely on the 20th March, 1912, the Crown filed in this Court (in case No. 2179) a notice to the defendant that the Attorney-General was wholly discontinuing that action. Such notice appears to have been served on the 19th March, 1912.

Section 23 of the *Expropriation Act* (R.S.C. 1906 ch. 143) reads as follows:

"23. Whenever, from time to time, or at any time "before the compensation money has been actually "paid, any parcel of land taken for a public work, "or any portion of any such parcel, is found to be "unnecessary for the purposes of such public work, "or if it is found that a more limited estate or interest "therein only is required, the minister may, by

"writing under his hand, declare that the land or "such portion thereof is not required and is aban- "doned by the Crown, or that it is intended to retain "only such limited estate or interest as is mentioned "in such writing.

"2. Upon such writing being registered in the "office of the registrar of deeds for the county or "registration division in which the land is situate, "such land declared to be abandoned shall revest in "the person from whom it was taken or in those en- "titled to claim under him.

"3. In the event of a limited estate or interest "therein being retained by the Crown, the land shall "so revest subject to the estate or interest so re- "tained.

"4. The fact of such abandonment or revesting "shall be taken into account, in connection with all "the other circumstances of the case, in estimating "or assessing the amount to be paid to any person "claiming compensation for the land taken."

The Crown acting under the authority and power conferred by this section, and before any of the compensation money had been actually paid, abandoned the whole of suppliants' property which had been expropriated as appeared by the information hereinbefore mentioned, and the Minister of Railways and Canals, by writing under his hand, gave notice to the suppliants (the defendants in the previous case) of such abandonment on the 27th July, 1912,—(this date has been supplied by counsel for the suppliants)—such notice in writing was registered in the Registry Office for the Registration Division of Quebec, on the 30th December, 1912, as the whole appears by Exhibit No. 10.

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The property in question is composed of two square pieces of land built upon. Upon one of them is a brick building 5 stories in height, having a frontage on Champlain Market of sixty-one feet and nine inches, extending back to the second one on Sous le Fort Street, which is a stone building of three and a half stories in height, with a frontage of 29 feet. The lower portion of the property facing the market was occupied by small shops and the upper stories by boarding houses for the farmers and people coming back and forward to the city in connection with the market: and the Sous le Fort property was occupied by two boarding houses, and was frequented by the crews of the boats to a large extent.

Now, it is contended, as will be seen by reference to the pleadings, that this property at the time of the expropriation, on the 24th January, 1911, was worth $61,747.75, and when it was returned to the owner it was only worth $30,000.—and the present claim is for $31,747.75, representing such alleged difference in value, together with the sum of $500. for legal expenses, making the total amount of the claim, $32,247.75.

It may, however, be here stated at once that at the close of the suppliant's evidence, the claim for $500. was abandoned by suppliants' counsel.

The question which at the outset presents itself in the consideration of the present controversy, is one of jurisdiction. Has this court jurisdiction, either under *The Expropriation Act*, or under the *Exchequer Court Act*, to hear and determine the present case? Subsection 4 of sec. 23 of *The Expropriation Act*, reads as follows:

"4. The fact of such abandonment or revesting "shall be taken into account, in connection with all

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"the other circumstances of the case, in estimating "or assessing the amount to be paid to any person "claiming compensation for the land taken."

At the time of the trial my mind, supported by the contention of the Crown's counsel, was inclined to the view that the intendment of sub-sec. 4, because of the wording "in estimating or assessing the amount to be paid to any person claiming compensation for the land taken" was that the court was given jurisdiction only in the case of partial abandonment, and where compensation was to be assessed for the part taken. However, upon a careful reconsideration of the question I have reached the conclusion that the Court is given jurisdiction under sub-section 4 as well in cases of total as in those of partial abandonment.

Sub-section 4 would further seem to provide that where an information for expropriation has been filed the damages once and for all should be ascertained in the case. Such remedy is, however, denied in the present case, because the Crown being plaintiff and *dominus litis*, in that case, of its own accord discontinued the action under the provisions of Rule 109. A settlement of all damages resulting from such abandonment in the first action would have saved a second action, and multiplicity of actions should always be discouraged. But where the Crown, before judgment is had in the expropriation proceedings, discontinues the action and so prevents damages being assessed at all by the court, (as was the case here), then clearly the provisions of *The Expropriation Act* do not apply, and the owner of the property returned to his possession by the Crown has a remedy by petition of right under the provisions of *The Exchequer Court Act*.

Is this a case where statutory proceedings having been previously taken between the parties the doctrine

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that damages arising from the authorized interference with property must be taken to have been assessed once and for all in such previous proceedings? (See *Great Laxey Mining Co.* v. *Clague* (1) In the expropriation proceedings between the parties here there was a discontinuance filed by the Crown before the case had proceeded to judgment. Consequently there was no judgment which would constitute a foundation for the plea of *res judicata* to the petition of right herein; and the suppliants would be left without any remedy if the court declined to entertain the petition on that ground. The court has found that the suppliants have sustained damage by the act of the Crown in temporarily taking the lands in question out of the possession of the suppliants, and *ubi jus, ibi remedium.* That remedy is supplied by the provisions of The *Exchequer Court Act* above quoted.

Where the Crown has discontinued its expropriation action, the subject cannot be without remedy. The wording of sub-sec. 4 of sec. 23 is only in the affirmative; there is no negative clause in that section whereby, in the case where the Crown discontinues its action and does not ask for an adjudication in the expropriation case upon such damages, the owner would be denied remedy. Where the jurisdiction is not denied in a negative form, and where the Court has jurisdiction under other statute, it should assume jurisdiction. Indeed," It is a maxim in the common "law, says Coke that a statute made in the affirmative "without any negative expressed or implied does not "take away the common law (2)."

This is cited only with the view of showing the mode of approaching an affirmative not followed by a negative. Then "Every Act must receive such

(1) (1878) 4 A. C. 115;.

(2) Hardcastle, on Statutory Law, 2nd Ed 1911.

"fair, large and liberal construction as will best "ensure the attainment of the object of the Act, "and of such provision or enactment according "to its true intent, meaning and spirit." (1)

If the jurisdiction of the Court were doubtful under the provisions of sec. 23 of *The Expropriation Act*, it is abundantly clear that jurisdiction to try the present case arises under the *Exchequer Court Act*.

Under sec. 19 of the *Exchequer Court Act*, this Court is given exclusive original jurisdiction "in all cases which the lands of the subject *are* in the possession of the Crown". It must be admitted that the lands are no longer in the possession of the Crown—but approaching the interpretation of the word *are* with again the help of sec. 15 of the *Interpretation Act* above referred to, it must not be taken in the narrowest sense of which the expression admits, but should receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act. Furthermore, sec. 10 of the *Interpretation Act* says: "The law shall be considered "as always speaking, and wherever any matter or "thing is expressed in *the present tense*, the same shall be applied to the circumstances as they arise, so that "effect may be given to each Act and every part "thereof, according to its spirit, true intent and meaning."

Again, viewing the word *are* in the light of this section 10, although in the present tense, it must be applied to all circumtances as they arise, and cover the cases where lands are or have been in the hands of the Crown and thereafter abandoned.

Going through the same manner of reasoning it must also be found that this court has also jurisdiction

(1) The Interpretation Act, Sec. 15.

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to hear and determine the present case under the provisions of subsecs. (a) and (b) of section 20 of the *Exchequer Court Act* which reads as follows:

"20. The Exchequer Court shall also have exclusive "original jurisdiction to hear and determine the following matters:—

"(a) Every claim against the Crown for property "taken for any public purpose;

"(b) Every claim against the Crown for damage to "property injuriously affected by the construction of "any public work."

The question of jurisdiction being all along distinguised from that of right of action.

RIGHT OF ACTION.

The Court having assumed jurisdiction it will now be necessary to decide as to whether or not the suppliants are entitled to recover for the alleged shrinkage in the value of the property between the date of the expropriation and the date of the abandonment.

The suppliants, as narrated in paragraphs 10 and 11 of their petition of right, rest their claim upon the allegations that their property "was situate on a "street bounding the Champlain Market, a large and "much frequented market place in the City of Quebec, "and it was anticipated at that time that the said "market, if removed, would be replaced by the prin-"cipal station of the National Transcontinental Rail-"way, and in fact the Crown was under contract with "the City of Quebec, to which the said market place "belonged, to replace the said market by the principal "station of the said Transcontinental Railway in the "City of Quebec . . . . . When the said property was "abandoned to the suppliants, the Champlain Market "had been removed and destroyed by and on behalf of

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"the Crown, and the proposal to erect the principal "or any railway station for the said railway had been "abandoned, and by reason of the foregoing facts, "the lot of land when returned by the Crown had "depreciated in value to the extent of $31,747.75.

Is there any right of action for such depreciation under the circumstances?

The trite maxim and rule of law for deciding whether or not the Crown can be held liable in such a case is clearly laid down in such text-books as Cripps, on *Compensation* (1), Hardcastle, *Statute Law*, (2) Browne & Allan, *Law of Compensation*, (3) See also the leading case upon this subject of *The Queen* v. *Barry*, (4), and the numerous cases therein cited.

The damage or loss must be such that, but for the statutory authority, it would have been actionable.

In the result the damages claimed in this case are for the injurious affection of the suppliants' property as resulting from the expropriation by the Crown of the Champlain Market or acquiring the same, and the tearing down of the Butcher's Hall, and failing to build there a terminal station. No physical interference with the suppliants' property is ever alleged.

They say when our property was first taken it was as part of a large scheme or project,—(and their property was required only as part of that large scheme):—but the Crown having changed its mind returned us our property and in the meantime it has decreased in value, because the Crown will not erect such principal station, and because it took and destroyed the Champlain Market. These facts may be all true, but will a right of action arise therefrom? That property has gone up in value at the time of the expropriation inside of six months, because of the prospective buil-

(1) 5th ed. p. 138.
(2) Ed. 1911 p. 305.
(3) 2 Ed. 116.
(4) 2 Ex. C. R. 333.

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ding of the principal or terminal station on the market place, as stated by Mr. Colston, one of the suppliants' witnesses. Then it is alleged its value fell through according to the suppliants' witnesses because of the abandonment of building such principal station and of the expropriation of the market.

There is no right of action that would give the suppliants relief under these circumstances. The Crown was and is at liberty to expropriate the Champlain Market, and not to erect that principal or terminal station, without giving a right of action to the suppliants, or to any of the proprietors in the neighbourhood. Whether or not the suppliants' property has or has not been expropriated, no right of action arises from such facts. The suppliants' neighbours, whose properties were never expropriated, while they benefited by what provoked the boom, and lost by the depreciation, if any, that followed such boom, have no right of action. If the Crown had not been authorized by statute to expropriate the market place, the suppliants or their neighbours would not have had a right of action against a purchaser of that market who would have destroyed it and used it in the manner as to him seemed best.

To enable the suppliants to succeed there must also be a physical interference with the property, or with some right incidental thereto, which would differ in kind from that to which others of his Majesty's subjects are exposed, or where what was done would give a right of action, but for the statute. It is not enough that such interference is greater in degree only than that which is suffered in common with the public. *Robinson* v. *The Queen*, (1).

(1) Ex. C. R. 439; 25 S. C. R. 692.

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The expropriation of the Champlain Market and the abandonment of the building of a terminal station thereon may be an interference that may affect the value of the suppliants' property; but such interference being suffered in common with the public in the neighbourhood cannot be the subject of an action, although it may happen that such injury sustained by the suppliants may be greater in degree than that sustained by other subjects of the Crown. *Archibald* v. *The Queen*, (1).

The increase or decrease in the value of the suppliants land, if any, was shared by all the other neighbouring proprietors whose lands were not taken and who cannot claim; therefore, if all these events had taken place and the suppliants lands had not been taken and abandoned,—exposed to the alleged fluctuation in the value of the lands in that neighbourhood, of which theirs would have been a part thereof, they would have had no right of action. The suppliants' land suffered no special damage distinguishable from that which has been suffered by the land owners in the immediate neighbourhood. *The King* v. *McArthur* (2), and cases therein cited.

The Crown could expropriate the market place without taking the suppliants' land and without becoming liable in damages to the suppliants. The Crown could make plans for a large station on the market place which would enhance the value of the suppliants property as well as the property in the neighbourhood,—abandon the erection of such a station, and could not again be held liable in damages by reason of such change. There would be no right of action in the suppliants with or without the statute allowing the Crown to expropriate.

(1) Ex. C. R. 251 and 23 S. C.R. 147. (2) 34 S. C. R. 577.

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The damages claimed are not damages resulting directly from the expropriation, of which the suppliants property formed part, but they are damages they allege which resulted from the fact that the Crown has expropriated the Champlain Market, thereby taking away some traffic from the locality. They further claim that the damages resulted also from the fact that the Crown did not carry out the plan of erecting on the Champlain Market a large terminal station. The damages on both counts are too indirect and too remote to form a legal element of compensation and for the reasons above mentioned are not recoverable.

There is no doubt that the considerable advance in the prices of the properties in the neighbourhood of the Champlain Market,—within the six months mentioned by Mr. Colston, a witness heard on behalf of the suppliants, —was in view of the fair prospective capabilities of these properties from their situation near a large terminal station. This sum of $61,747.75 offered by the Crown and accepted by suppliants, was obviously the particular and temporary value that attached to the property, in the estimation of the valuators at the time that it was thought Champlain Market would be the terminal station of the Transcontinental at Quebec. And it is equally obvious that if the project of that terminal station gave the suppliants' land that increased value, the Crown that gave it this is not to pay for it, in the case where it abandons the public work that had given such speculative temporary value.

In the case of *The Queen* vs. *Murray* (1), the temporary enhancement in the value of lands by reason of their being adjacent to the site of a projected rail-

(1) 5 Ex. C. R. 69.

way terminus which had been abandoned was not taken into consideration by the court in assessing compensation for the expropriation of such land. The enhanced value the suppliants' property had in 1911 was by reason of the projected terminal station, but which was subsequently abandoned to a certain degree. If the Crown's project gave it that enhanced value and if the Crown's abandonment of such project takes away that enhanced value, it should not be made to pay for the same if it does not exist at the time of the abandonment.

There is, of course, the further fact that the suppliants' property was required for such terminal station.

Part of the fallacy of the present case is, perhaps, as it was said in the *Cedar Rapids Case* (1) that the owners are seeking to recover a proportional part of the potential enhanced value that might have been derived or realized from the erection of this terminal station as it existed in their minds at one time. To use the expression of the man on-the-street, the "boom" took place when the erection of such terminal station was contemplated and the crash followed when it was abandoned. The suppliants are now claiming the difference, because they contend they might have sold their property at the top of the boom. But that could not be done, because their property was required for the larger scheme. If their property had not been expropriated it would have been because the larger scheme would not have been carried out, and its value would not have gone up to the sum of $61,747.75. If it had not been expropriated it would have been because the smaller scheme, as enunciated in the evidence, was to be carried out and the property would

(1) (1914) A. C. 577.

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not have gone up to these figures at that time,—although some of the witnesses contended that the works which will be actually carried out in that locality will eventually give this property much further enhanced value in the future.

Equity cuts both ways. If the value of the suppliants' property has decreased in value between the time of the expropriation in 1911 and the time of the abandonment in 1912, and that the contention of the suppliants is that the Crown should pay that difference, should, then, on the other hand, in a case where the value of the property has enhanced between the time of the expropriation and that of the abandonment, this difference be paid by the owners? That would seem the test of the rule laid down by the suppliants.

The suppliants further contend from the transaction which took place between the Crown and the suppliants a contract has arisen and has been entered into. They say the Crown took the property, offered $61,747.75, and the suppliants accepted that amount, and that completed the contract. To properly approach the question, one must first consider that the Crown took the property under powers vested in it under an Act of Parliament, and under an Act of Parliament it also had the power to abandon such property at any time "before the compensation money has been actually paid". Therefore, if there existed a contract, it must be a contract with a defeasible clause (*clause resolutoire*) as enacted in sec. 23 of the *Expropriation Act* giving the Crown the right to abandon. These transactions do not amount to a contract for which specific performance could be asked even between subject and subject.

EVIDENCE.

As a prelude to the examination of a part of the evidence in this case, it must be said that as is usual in

expropriation cases, the evidence, is very conflicting and divided, so to speak, on party lines. It may be said that the opinion of a witness may be honestly obtained, and it may be quite different from the opinion of another witness also honestly obtained; but the duty of the court is to take all the surrounding circumstances into consideration to properly weigh the same. It is with this preliminary remark that it is deemed desirable to approach this question of an alleged proposed sale of this property at the time of the expropriation. Three witnesses spoke upon this subject. The first one was witness Ramsey, who had been the suppliants' agent for the last 27 years for the purpose of collecting rents, having general charge of this property, with a number of other houses. At page 15 of the evidence, he says that between January, 1911, and July, 1912, several enquiries were made from men who wished to invest in the property either as speculation or otherwise, and who were willing to *consider* the purchase at $70,000.—adding, we could not deal with the property as it had passed to the Government. From this evidence, this has clearly happened after the expropriation.

Witness Collier says (p. 22) he was one, with another person, who called on Ramsey to try and purchase the property from him before the Government had expropriated, or at about that time; but he knew it was to be expropriated and he was disposed to offer $60,000.

Witness Hearn, who gave his evidence in a manly and honest manner carrying conviction, testified he was indeed one of those who, more or less, were associated with Collier and who thought of buying the property, having this amount of $60,000 in mind, but he adds frankly, "I don't know that I would have given that for it."

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On this evidence it is impossible to find, as contended by the suppliants, that an offer for either $60,000 or $70,000. was ever made the suppliants for the property before the expropriation.

On the question on the respective value of the property at the date of the expropriation and the date of the abandonment, it may be said that out of five witnesses altogether heard on behalf of the Crown, three of them may be considered interested as compared to perfect strangers. One is the suppliants' agent—two are exactly in the same position as the present suppliants with respect to property taken and subsequently abandoned. The fourth was one of the three Crown valuators who placed a value of $61,747.75 upon the suppliants' property at the date of the expropriation, but who considered such value reduced by half when abandoned. The fifth witness gave perfectly untrammelled evidence, and said that if the suppliants' property acquired that high value in 1911, in common with the property in the neighbourhood, it was on account of the prospective building of the station on the market place.

On behalf of the Crown two, out of the three valuators who had placed a value of $61,747.75 upon the suppliants' property at the time of the expropriation, testified the property was worth the same at the time of the abandonment. The judgment of these three valuators was accepted by the suppliants in 1911, why should not the judgment of the majority of these valuators be now accepted? However, the opinion of these two valuators is shared by all the other witnesses heard on behalf of the Crown.

TENANCY.

The Crown, by allowing the suppliants to retain possession of the lands and buildings all through the

period which elapsed between the date of the expropriation and the date of the abandonment, which was perfected on the 30th December, 1912, has saved the adjustment of the compensation coming to the tenants, if the leases had been cancelled or interfered with. The leases were thus allowed to run and the tenants were not interfered with in the occupation of the premises during the life of the leases.

And while for the multiplicity of reasons hereinbefore mentioned, the suppliants cannot succeed in respect of the alleged shrinkage in the value of their property, they should recover all damages occasioned by the expropriation, through the losses in the rents collectable from the leases of their property. It is true the suppliants by their petition of right are not specifically claiming any damages in respect of the tenancy; but sub-paragraph 2 of paragraph 12, which constitutes the prayer of the petition, reads as follows: "Such further and other relief as to this Honourable Court shall seem meet". The damages resulting from the tenancy are consequential damages resulting and flowing from the expropriation which is the subject of the present action. These damages are such as are contemplated by sub-sec. 4 of sec. 23 of the *Expropriation Act*, in the following words "*in connection with all the circumstances of the case.*" The Crown cannot with immunity interfere with the tenancy, as is even conceded by its counsel at trial.

What are the facts? At the date of the expropriation the suppliants had this property rented under nine separate leases, for a total yearly rental amounting to $2,147.00; all these leases, but one, expired during the time the land was vested in the Crown. There was one tenancy of $380 yearly, vacant when the property was returned to the owners. When the

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leases expired during the time the land was vested in the Crown, the tenants would not renew because the owners had no control over the property, and could not rent for any fixed or definite periods, and the prospective tenants would not enter into leases under such circumstances. In some cases leases were renewed at a lower rental and two stores had to be rented for storage instead of for business purposes. When the Crown abandoned the property, the owners were receiving an annual rental of $834.00 as compared with $2,147.00 at the time of the expropriation, and at the time of the trial they were getting $1,642.00.

The sum of three thousand dollars will be allowed for the interference in the tenancy as representing the damages arising therefrom, both during the period the lands were vested in the Crown and for such other period following the same as might have been affected by such interference, and this will carry with it the general costs of the action. It may be contended that the suppliants failed on the main issue and should not have costs; but it must be taken into consideration that this is an action wherein the Crown, exercising its arbitrary right of eminent domain, has compulsorily taken the suppliants' property, and that the latter, after all, are recovering a substantial amount of damages arising from such expropriation and abandonment, and it should be without any loss or costs to them.

There will, therefore, be judgment declaring that the suppliants are entitled to recover the sum of three thousand dollars and costs.

Judgment accordingly.

Solicitors for the suppliants: *Pentland, Stuart, Gravel & Thompson.*

Solicitors for the respondent: *E. Belleau.*