HIS MAJESTY THE KING.....PLAINTIFF;

1921
May 3.

AND

J. LUDGER LAFOND.....DEFENDANT.

Expropriation—Inconvenience common to public generally—Loss of trade.

The Crown expropriated the right to flood a part of L's property, which flooding was due to the erection by the Crown, of the Quinze Lake Dam, a public work of Canada. L. claimed that besides the compensation for the easement taken on his property, he should also be compensated for damages to his trade, resulting from the decrease of population; which decrease was due to the flooding of neighboring farms and the owners being in consequence forced to move away.

Held: That no claim could arise in respect of an inconvenience common to the public generally. The general depreciation of property resulting from being in the vicinage of a public work does not give rise to a claim by any particular owner; and more particularly when the claim was for the loss of trade or business resulting from the said cause, and that therefore L. was not entitled to compensation on the above claim. *The King* v. *MacArthur* (1).

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., & Louis Cousineau, for plaintiff.

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

(1) 34 S.C.R. 570 referred to.

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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 $66.00 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 $6,500.00.

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.:

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 two cases (viz., No. 3606, *The King* v. *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 observation respecting the nature of the expropriation, the area taken and the compensation so far as applicable.

The expropriated easement in this case is in respect to .90 acre which I would allow at $50 an acre, namely, $45.00, and for the area of .75 acre I would allow as in the other cases at $5.00 an acre, namely, the sum of $3.75, making in all the sum of $48.75. The small piece of bush land affected is at the north east boundary and does not affect the farm in any way. The other

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piece of 0.90 acre affected thereby is in stump and in a deep ravine which witnesses Chester and Coutts say could not be cultivated. However, there is the other question of a small bridge over the ravine or that expropriated part, which would have to be slightly larger than before. At the northern end the bridge would be small and there is also the consideration that the northern part of lot 6 abuts on the highway. I think the additional sum of $40 should be allowed in respect of the higher degree of difficulty in communicating over these 0.90 acres, from east to west of lot 6, making in all, $88.75. The actual damage caused to the farm as a farm, the defendant has qualified as *"une bagatelle insignifiante,"* and this sum of $88.75 a very liberal compensation.

However, the substantial part of the defendant's claim is in respect to the damage to his trade and business, resulting, as he contends, from the flooding of all the neighboring farms, which has had the effect of sending the people away from that locality, injuring thereby his trade and business. The damages result in the decrease of population occasioned, as alleged, by the expropriation.

The evidence adduced discloses the opinion of witnesses that, had it not been for the flood, resulting from the dam, and sending the settlers away, the locality had quite a potential future. That, within a comparatively short time, the locality would have become quite a centre, with a church, a post office, with the result of prosperity and increase in value of property.

However, for such damage, if any suffered, the law does not recognize a right of recovery. No claim can arise in respect of an inconvenience common to the public generally. The general depreciation of property resulting from the vicinage of a public work does not

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give rise to a claim by any particular owner and much less for loss of trade or business resulting from the same cause. *The King* v. *MacArthur* (1). A number of authorities will be found in this *MacArthur case* in support of this proposition which is too well known and recognized to labour any more upon the same. See also *Cowper Essex* v. *Local Board of Acton* (2).

The defendant recovers, it is true, a somewhat larger sum than the one offered, but he fails on the main issue, on the principal element of compensation upon which the plaintiff succeeds, which is the more important claim; however, this being the case when the subject's property is taken against his will, I will set off the cost by denying costs to either party. See also *McLeod* v. *the Queen* (3).

Therefore there will be judgment as follows, viz.:—

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

2°. The compensation for the right to so flood the defendant's lands and for all damages whatsoever resulting from the said expropriation is hereby fixed at the sum of $88.75 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 $88.75 with interest as above mentioned and without costs to either party.

Judgment accordingly.

(1) 34 S.C.R., 570.
(2) 14 A.C., 153 at 161.
(3) 2 Ex. C.R., 106.