

PRUDENT SIMONEAU .....CLAIMANT ;

1890

AND

Feb. 17.

HER MAJESTY THE QUEEN.....RESPONDENT.

*Government railway—Damage to adjacent farm—Right to compensation—Prospective damages—Acquittance by predecessor in title—Maintenance of boundary ditches—43 Vic. c. 8, construction of.*

Where, by the construction of a railway, the claimant is put to greater trouble and expense in carrying off surface water from his lands through the boundary ditches between his farm and the farms adjoining, he is entitled to compensation therefor.

2. The injury thereby occasioned to claimant is one that could have been foreseen at the time when part of his farm was taken for the purposes of the railway, and was discharged by an acquittance given to the company of all damages resulting from such expropriation.
3. The Act 43 Vic. c. 8 does not make the crown liable for the acts or omissions of the Grand Trunk Railway Company in respect of the construction or management by the company of such portion of its railway in the Province of Quebec as was purchased by the crown.
4. The crown is not bound to keep in repair the boundary ditches between farms crossed by the Intercolonial Railway in the Province of Quebec.

**APPEAL** from a report of the Registrar of the court sitting as a special referee.

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

October 7th, 1889.

*Belcourt*, in support of motion by way of appeal: The law applicable to this case is the law of the Province of Quebec,—the *lex loci*. (Cites *Redfield on Railways* (1); *Story on Conflict of Laws* (2); *Bell v. Grand Trunk Railway Company* (3); *Holt's Canadian Railway Law* (4).

(1) Pt. VIII. sec. 204 b (1).

(3) 20 C. L. J. 346.

(2) Secs. 76 & 272.

(4) P. 59.

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2. By the law of the Province of Quebec incidental damages are not covered by the compensation awarded or paid to persons whose lands are expropriated under the enactments in that behalf, unless such damages are expressly mentioned in the deed of conveyance to the railway company. (Cites *Cantin v. The North Shore Railway Company*) (1).

3. A railway is liable for the damages caused by its works although performed within the powers conferred on it by statute.

(Cites *La Corporation de Tingwick v. Grand Trunk Railway Company* (2); *Grand Trunk Railway Company v. Meegar* (3); *Grand Trunk Railway Company v. Miville* (4); *Grand Trunk Railway Company v. Landry* (5); *Canadian Pacific Railway v. Pichette* (6); *de Bellefeuille's Code Civil Annoté* (7); *Pouliot v. The Queen*) (8).

*Hogg, Q.C. contra*, relied on the conclusions as to law and evidence arrived at by the Registrar in his report.

BURBIDGE, J. now (February 17th, 1890) delivered judgment.

This is an appeal against the report of the Registrar of this court recommending that the claimant's action be dismissed.

It is alleged in substance in the statement of claim that the claimant is the owner of a piece of land known as lot No. 343, in the parish of St. Ignace, in the county of Montmagny and Province of Quebec, which is crossed by the Intercolonial Railway; that by virtue of a deed of sale dated the 13th of May, 1854, made between one François Simoneau, through whom the claimant

(1) Ramsay's App. Cas. 591.

(2) 3 Q. L. R. 111; 9 R. L. 346.

(3) 29 L.C.J. 214.

(4) 14 L.C.R. 469.

(5) 11 R.L. 590.

(6) 31 L.C.J. 36.

(7) Art. 1053, No. 104.

(8) 1 Ex. C. R. 313.

derives title, and the Grand Trunk Railway Company of Canada, from whom the respondent purchased that portion of the Intercolonial Railway that crosses the claimant's property; that the said company was, and the respondent is, obliged to keep open and in good order the ditches and water-courses on each side of the railway track, and the culverts communicating from one side of the track to the other; and that such ditches, water-courses and culverts have not been kept open and in good order, by reason whereof a portion of the claimant's property has been, and is, flooded, and he has, in consequence thereof, suffered loss and damage.

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It is not material, but perhaps it is as well to observe here that if the claimant intended to allege that the obligation referred to is founded upon the express terms of the deed his proof fails him, as the deed contains no such covenant.

It appears that the claimant's farm is at the bottom of a slope and that the railway ditches, which cross his boundary ditches and those of the neighboring proprietors, collect the water for about one mile and a half and discharge it upon his property, and that, in consequence, he is obliged either to suffer his land to be overflowed or to accept the burden of maintaining ditches sufficient to carry off the water so collected and discharged. The burden thus thrown upon the claimant is one, I think, that depreciates the value of his property and would, in a proper case, constitute a matter for compensation.

In the deed to which I have referred, mention is made of the Acts of the Province of Canada, 16 Vic. chaps. 37, 39 and 76, respecting the incorporation of the Grand Trunk Railway Company of Canada, and the powers given to it and other companies to amalgamate; and it is, therein, amongst other things, recited that the said company required certain described lands

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belonging to François Simoneau for “la construction, “entretien, commodité et usage” of the company; that the company “ayant suivi et rempli les formalités “prescrites par les statuts en force concernant les “chemins de fer, a droit de prendre possession de la “dite pièce ou portion de terre.” And that the said parties had agreed upon the price to be paid for the said piece or portion of land, “et de la compensation “à être accordée à la dite partie de première part pour “dommages à elle résultant, par suite de l’expropria- “tion qu’elle subit.”

And by the said deed the said François Simoneau, for the consideration therein expressed, conveyed the said piece of land to the said company for the purposes of the railway, and discharged the company from the damages mentioned.

It also appears that for five or six years after the construction of the railway there was no flooding of the lands in question; but that subsequently they were flooded, not in consequence of any defect or want of repair in the railway ditches or culverts, but because the boundary ditches referred to have not been kept open and in good order. Now it appears to me that it cannot fairly be said that what has happened could not have been foreseen, for it was obvious that the ditches on each side of the railway would collect water and discharge it in the manner mentioned. I am of the opinion, therefore, that the compensation to which the proprietor was entitled for having to maintain boundary ditches capable of discharging a larger volume of water than flowed through them before the construction of the railway was covered and discharged by the deed between the parties.

But apart from that, it is very clear that the mischief to which I have alluded had made itself manifest many years before the respondent purchased the railway

from the said company ; and that since such purchase nothing has been done or omitted on the crown's part to alter the position of the matter or to give rise to the claim put forward.

Reference is made in the report to the Act of the Parliament of Canada (43 Vic. c. 8) by which the agreement of July 17, 1879, between the crown and the said company for the purchase of the Rivière-du-Loup branch of the Grand Trunk Railway is confirmed. By the 9th clause of such agreement the crown undertook to indemnify the company against payments of all claims for taxes, land, land damages, and such like matters springing into existence for the first time after the date of the transfer of the road ; and the company undertook to indemnify the crown against payment of all similar claims having an existence before the date of the transfer. The effect of this provision is not, however, to make the crown liable for the acts or omissions of the company.

For the reasons that I have mentioned, the recommendation in the report should, I think, be confirmed, and judgment be entered for the respondent with costs.

*Appeal dismissed with costs.*

Solicitor for claimant : *P. A. Choquette.*

Solicitors for respondent : *Casgrain, Angers & Lavery.*

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