

1924  
Feb. 4.

IN THE MATTER OF The Soldier Settlement Act of 1919, and  
its amendments.

BETWEEN

THE HONOURABLE SIR LOMER }  
GOUIN, HIS MAJESTY'S ATTORNEY GEN- } PETITIONER;  
ERAL FOR CANADA..... }

AND

ALFRED EDWARD PUGH.....RESPONDENT.

*Crown—Soldier Settlement Act, 1919, Section 48—Warrant of possession—  
When may be obtained.*

*Held*, where the Crown had entered into an agreement with P., a returned  
soldier, for the sale of land to him, under the provisions of the Soldier

Settlement Act, 1919, it was not open to the Crown, upon *P*'s failure to perform his part of the said agreement, which had been cancelled as provided for by the said Act, to obtain the warrant of possession referred to in Section 48 thereof; because that section limits the issue of a warrant to cases where the Crown has acquired land by contract or purchased it compulsorily, and resistance or opposition is made by some person, preventing the Crown from entering upon and taking possession of the same.

1924  
 ATTORNEY  
 GENERAL  
 FOR CANADA  
 v.  
 PUGH.  
 Audette J.

APPLICATION by the Attorney General for Canada for the issue of a warrant of possession under Section 48 of the Soldier Settlement Act, 1919.

February 2nd, 1924.

Application now heard before the Honourable Mr. Justice Audette at Ottawa.

*E. Miall* for the Attorney General.

*George F. Henderson, K.C.* for the respondent.

The facts and questions of law involved are stated in the reasons for judgment.

AUDETTE J., now (February 4, 1924), delivered judgment.

This is an application, on behalf of the Attorney General of Canada, for the issue of a warrant under the provisions of Sec. 48 of The Soldier Settlement Act, 1919, directing the sheriff to place the board, or some person acting for it, in possession of the West Half of Sec. 2, Township 38, Range 12, West of the second Meridian, in the province of Saskatchewan.

The Crown, having acquired the lands in question, entered into an agreement for the sale of the same to the respondent—a returned soldier—under the terms and conditions mentioned in the deed filed herein and executed under the provisions of the Act.

The respondent having failed to perform his part of the contract, the contract or agreement for sale was duly cancelled and rescinded as provided by the Act.

The Crown following up the rescission or cancellation of this agreement of sale, asked for possession of the lands in question and upon the respondent's refusal to comply therewith, now applies for the warrant of possession provided by Section 48.

This Section 48 of The Soldier Settlement Act was borrowed almost word for word, *mutatis mutandis*, from Sec.

1924  
 ATTORNEY  
 GENERAL  
 FOR CANADA  
 v.  
 PUGH.  
 Audette J.  
 ———

21 of The Expropriation Act (R.S.C. 1906, ch. 143) to perform obviously the same function as Section 21, since Section 48 forming part of Part III of The Soldier Settlement Act, deals specifically with identical matters, i.e., with the expropriation of lands by the Crown for the purposes of the Act.

All of these sections of Part III of the Act, from Sec. 35 to Sec. 48 deal exclusively with the expropriation of lands, and it is in the light of such a purpose that one must approach here the consideration of the meaning of Section 48.

Moreover the words of Sec. 48 distinctly declare under what circumstances a warrant may issue. It is when the Crown or the board is meeting with resistance or opposition upon entering or taking possession of land,—that is when it is expropriating, taking land compulsorily, that the provision applies. This appears more clearly upon reading further on when it enacts that the judge will direct the issue of such warrant upon

proof of the execution of the conveyance of such land to the board, or agreement therefor—or the gazetting of a notice in Form D.

Indeed, all of these circumstances have relation to the time the Crown acquires land for the purpose of the Act and not otherwise.

It therefore appears beyond all doubt that the issue of such a warrant is not authorized by the Act when the respondent, in breach of his contract or agreement withholds possession of the land. The position of the parties in the present controversy is that of a contractual relation flowing from the agreement of sale above referred to, and which is filed with the said petition.

Therefore I find that Section 48 does not provide for the issue of a warrant of possession upon the circumstances of the present case; but is limited in its scope to lands expropriated or compulsorily taken. The application is dismissed with costs.

*Judgment accordingly.*

---