

BETWEEN :

HIS MAJESTY THE KING..... PLAINTIFF;

1920

Oct. 14.

Reasons for
Judgment.

AND

JAMES LOONAN, LLOYD JAMES
LOONAN, AND THE STANDARD } DEFENDANTS.
AGENCIES, LIMITED..... }

Expropriation—Defendants' title—Severance—Use by sufferance—Compensation.

Held, that where, by a previous expropriation, L's property was severed by the right of way of the Canadian Pacific Railway crossing it, and where L's use of a culvert under their tracks as a passage from one parcel of land to the other was only by sufferance and without legal right or title, the fact that the expropriation takes land on each side of the said right of way and thus closes the access to the culvert, is not a severance of the property for which L. would be entitled to compensation, and nothing will be allowed for same in fixing the compensation under expropriation proceedings.

INFORMATION exhibited by the Attorney-General of Canada to have property taken for purposes of a hospital at Calgary valued.

The case was tried before the Honourable Mr. Justice Audette, at Calgary, on the 28th day of September, 1920.

Clifford F. Jones, K.C., for the plaintiff.

I. W. McArdle and W. A. Davidson, for Loonan Bros., defendants.

The facts are stated in the reasons for judgment.

1920

THE KING
v.JAMES LOONAN,
LLOYD
JAMES LOONAN AND
THE
STANDARD
AGENCIES,
LIMITED.Reasons for
Judgment.

AUDETTE J. now (October 14, 1920) delivered judgment.

THIS is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that certain lands, belonging to the defendants, were taken by the Crown, under the provisions of The Expropriation Act, for the purposes of a hospital, by depositing on the 29th April, 1919, a plan and description of such lands in the office of the registrar of the Southern Alberta Land Registration District, at Calgary, in the province of Alberta.

The title to the land is admitted to be in the defendants, James Loonan and Lloyd James Loonan, subject to a mortgage in favour of the other defendant, the Standard Agencies, Limited.

By the information, the Crown offers for the lands so taken, the sum of \$10,175.50—an amount already tendered, and being at the rate of \$50 an acre. The defendants, by their statement of defence, claim the sum of \$30,357.00.

The lands expropriated are composed of two parcels, separated from one another by the right of way of the Canadian Pacific Railway. The piece to the north of the railway contains 142.03 acres, and the one to the south 61.48 acres, making in all 203.51 acres.

This property, slightly over 1,100 acres, was at the time of expropriation and years previous, used as a ranch, with the exception of the piece adjoining the Bow River which was rented to Chinamen for gardening purposes and also for raising oats. The 900 odd acres were, previous to the expropriation, used as a ranch and rented as such for \$300 a year. The whole ranch, four years previous to the expropriation, had been offered at \$35 an acre.

As will be seen on looking at the plan, the Canadian Pacific Railway crosses the property and severs the northern part from the comparatively small piece to the south. There existed a severance of the property by the railway before the expropriation. The expropriation does not take the whole of the parcel lying between the railway and the Bow River,—leaving to the west 30 acres of the parcel south of the railway. It was claimed, at bar, that the parcel south of the railway was not absolutely severed before the expropriation, because, as stated by some witnesses, there existed a viaduct under the railway track connecting the south and north of the railway, through which cattle could easily pass. However, it turned out that the so-called viaduct is nothing but a large culvert, to conduct the waters of the creek under the railway; but it could formerly be used by the cattle and was so used. This state of things has been changed since the Crown has expropriated the piece of land immediately adjoining the railway to the north.

However, while this culvert was so used, as a means of access between these two pieces of property, there was no evidence adduced to show that the defendants had any legal right to use that culvert as such a means of access,—the reasonable inference being that they had been using it by sufferance without title, and that the railway could at any time fence in each side of the right of way, thus cutting off access.

Three witnesses were heard by each party respectively, and here follows a brief summary of their testimony. On behalf of the owners, witness Parslow values the land taken, without improvement, at \$70 an acre, and contends the balance of the farm, about 911 acres, are damaged by the expropriation to the

1920

THE KING
v.
JAMES LOONAN,
LLOYD
JAMES LOONAN AND
THE
STANDARD
AGENCIES,
LIMITED.

Reasons for
Judgment.

1920

THE KING
v.
JAMES LOO-
NAN, LLOYD
JAMES LOO-
NAN AND
THE
STANDARD
AGENCIES,
LIMITED.

Reasons for
Judgment.

extent of \$10 an acre, and the 30 acres, on the south-west, to the extent of \$10 and \$15 an acre. Henry Jones values the buildings at \$1,400, the breaking of 140 acres at \$5 an acre, and the land at \$50 an acre. The property as a whole he values at \$30 an acre, and the damages to the 911 acres remaining at \$7.50 an acre. He values the lands expropriated from the Canadian Pacific Railway, taken at the same time as those in this case and for the same purposes, at \$45 an acre—an amount which was accepted by the Canadian Pacific Railway.

George H. Johnston values the land taken at \$50 an acre, and contends the 30 acres, above referred to, are depreciated to their full value. The depreciation of the 911 acres he placed at \$6.25 an acre, and values the buildings at \$2,300.

On behalf of the Crown, witness Clarry values the land taken to the north of the railway at \$35 an acre, and to the south \$40 an acre, and the buildings at \$1,500, and adds that the 30 acres are depreciated 50 per cent. He cannot say, if any, by how much the balance of the farm is depreciated by the expropriation. Witness Thompson values the land taken at \$50 an acre, including the buildings which he knows for 29 years. He values the depreciation to the 30 acres at \$10 an acre, and testifies there is no depreciation to the 911 acres. Albert C. Johnston values the land taken at \$35 an acre, and would not allow anything for the breaking of the land, adding that the thirty acres are possibly depreciated by \$10 an acre.

The Canadian Pacific Railway, for lands of a similar class, accepted \$45 an acre, including all damages, and the Crown tendered in this case at the rate of \$50 an acre, including the buildings and for all damages.

Taking all the circumstances into consideration, I have come to the conclusion to allow as follows:

For the land taken, 203.51 acres, at the rate of \$50 an acre.....	\$ 10,175.50
For the buildings.....	1,500.00
For damages to the 30 acres, to the south west, at the rate of \$10 an acre...	300 00
For the breaking of 100 acres to the south at \$5.....	500 00

1920

THE KING
v.
JAMES LOONAN, LLOYD
JAMES LOONAN AND
THE
STANDARD
AGENCIES,
LIMITED.

Reasons for Judgment.

Coming to the question of damages to the 900 odd acres, north of the lands taken, I consider that if the whole property were worth \$30 an acre, and if \$50 an acre is allowed for the 203 acres taken, this excess price of \$20 an acre over the \$30 for this piece so carved out of the whole property, offsets whatever damages or depreciation which might result from the expropriation to the parcel to the north.

Making in all the sum of.....\$ 12,475.50

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

1st. The lands expropriated are declared vested in the Crown as of the date of the expropriation.

2nd. The compensation for such lands and property including all damages whatsoever resulting from the expropriation, is hereby fixed at the sum of \$12,475.50 with interest thereon from the 29th day of April, 1919, to the date hereof.

3rd. The defendants, James Loonan, and Lloyd James Loonan, upon giving to the Crown a good and sufficient title to the lands expropriated, free from the mortgage to the Standard Agencies, Limited,

1920

THE KING
v.
JAMES LOO-
NAN, LLOYD
JAMES LOO-
NAN AND
THE
STANDARD
AGENCIES,
LIMITED.

Reasons for
Judgment.

and free from all other mortgages or incumbrances whatsoever, are entitled to recover from the plaintiff the said sum of \$12,475.50 with interest as above mentioned. Failing the said defendants, James Loonan and Lloyd James Loonan to discharge the mortgage in favour of the Standard Agencies, Limited, the latter will be entitled to such part of the compensation monies as will discharge the said mortgage, and if any monies remain over and above the same, they shall be paid to the other two defendants, but always in the manner above mentioned.

4th. The defendants, James Loonan and Lloyd James Loonan are also entitled to their costs.

Judgment accordingly.

Solicitor for plaintiff: *J. W. McArdle.*

Solicitors for defendants, Loonan Bros. : *Jones, Pescod
& Hayden.*