1909
June 24.

HIS MAJESTY THE KING, ON THE INFORMATION OF THE ATTORNEY-GENERAL FOR CANADA .... } PLAINTIFF;

AND

WILLIAM SAMUEL CUNARD, ERNEST HALIBURTON CUNARD, CYRIL GRANT CUNARD, AND ERNEST DEBLOIS BRENTON, EXECUTORS OF THE LAST WILL AND TESTAMENT OF WILLIAM CUNARD, DECEASED, AND LAURA C. CUNARD } DEFENDANTS.

Expropriation—Water-lot—Right of grantee to erect wharf—Interference with navigation—Constitutional law.

Held, following *Wood* v. *Esson* (9 S. C. R. 239), that the Crown in the right of a Province, without legislative authority therefor, cannot grant a water-lot extending into navigable waters so as enable the grantee to construct or erect any wharf or other obstruction thereon that would interfere with navigation.

THIS was a case of expropriation of lands for the purposes of the Intercolonial Railway at Halifax, N.S.

The facts are stated in the reasons for judgment.

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The case came on for hearing at Halifax.

R. T. MacIlreith and *C. D. Tremaine* for the plaintiffs;

J. J. Ritchie, K.C., and *G. Stairs* for the defendants.

Judgment was delivered at the conclusion of the hearing by

CASSELS J.:—

The action is brought on behalf of the Crown to have the value ascertained of certain property situate in Halifax at that part of the harbour called the Narrows. The defendants rest their title to the water-lot upon a grant

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from the Government of Nova Scotia bearing date the 17th July, 1865. By this grant a water-lot in front of their property running out to a distance of 240 feet from the shore line was granted to the defendants. At the water end of this lot the depth runs in the neighbourhood of from 20 to 25 feet. If the defendants have the right to fill up this water-lot, and to build a pier at the end of the water-lot, the pier would extend parallel to the shore, about somewhere in the neighbourhood of 1800 feet in length. On the evidence this would be a very valuable right. According to the evidence of the defendants' witnesses, with a right of access across the tracks of the railway, the value would be from $20,000 to $25,000.

Evidence has been given of the value of other properties, namely, the Tully property not far away, the price for which was paid at a much less rate than that claimed was the value of the defendants premises. The difference between the Tully property and the property in question owned by the defendants is obvious so far as the value from a shipping standpoint is concerned. In the case of the Tully property the frontage is about considerably less than one-fourth of the frontage of the Cunard property. The evidence is clear that the Cunard property is a unique property, having a frontage of 1800 feet. If they were at liberty to build their wharf it would give them wharf accommodation for ocean-going steamers, something which could not be accomplished on a smaller property. Although the comparisons between the two are not in line, it is one thing to say that a water-lot with a frontage of 100 feet can be sold for so much; it is another thing to say a water-lot with a frontage of 1,800 feet with wharf accommodation and storage accommodation for large vessels is not of vastly greater proportion.

As the case stands, it is conceded that there has been no Act of the Provincial Legislature authorizing the Gov-

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ernment to grant the water-lot. As far as I am concerned I am bound by the decision of the Supreme Court in *Wood* v. *Esson* (1). The effect of that decision is that the Crown for the Province cannot grant a water-lot extending into navigable waters so as to enable the grantee to construct or erect any wharf or other obstruction that will interfere with navigation, without legislative authority. When you assume that the depth of the water at the point in question would be from 20 to 25 feet in depth, it necessarily involves the interference with navigation of the harbour at Halifax. The point of the decision of *Wood* v. *Esson* by which I am bound, is that the grant in question would be void; it being admitted that there was no legislative authority for the grant. It becomes necessary, therefore, to consider the case as if the present defendants had not acquired the right to erect any structure. This will bring it down to the question of the value of the particular land as land—as to this I pass no opinion. The Crown has offered, and His Majesty has stated, that he is willing to pay the sum of $10,000.

The value of these particular lots of land is less than the sum of $10,000. It is not necessary to go into details and find how much less they are in value without the water than the sum of $10,000. His Majesty having offered, through the Attorney-General of Canada, to pay this sum, I would not disturb the offer—and I think the sum of $10,000 is ample compensation for the rights which the defendant has, and the usual judgment will follow vesting the lands in the Crown subject to the payment of the $10,000. The tender having been sufficient the defendant has to pay the costs of the action. No interest is allowed.

Judgment accordingly.

Solicitor for plaintiff: *T. MacIlreith.*

Solicitor for defendant: *W. A. Henry.*

(1) 9 S. C. R. 239.