

HIS MAJESTY THE KING PLAINTIFF;

AND

CATHERINE MUSGRAVE ET AL. DEFENDANTS.

1924
Sept. 17.

*Expropriation—Rights of tenant and owner—Separate and distinct tenders
—Tenant at will.*

Held, that where the Crown expropriates a property which is occupied by a tenant at will, with rights in tenancy and who is not a trespasser, the owner and such tenant have each separate and distinct interests and each is entitled to a separate tender and offer.

The King v. Goldstein (1924) Ex. C.R. 55 referred to.

INFORMATION to fix damages suffered by the defendants herein by reason of the expropriation of their property and the subsequent abandonment thereof by the Crown.

John A. McDonald for plaintiff.

N. A. MacMillan, K.C. and *Joseph Macdonald* for defendants.

Case was heard before the Honourable Mr. Justice Audette, at Sydney, on the 20th June, 1924.

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AUDETTE J., now this 17th September, 1924, delivered judgment.

This is an information exhibited by the Attorney General of Canada whereby it appears, *inter alia*, that certain property belonging to the defendants Musgrave was taken and expropriated by the Crown, under the provisions of the Expropriation Act, for the purpose of "an Airship and Seaplane Station," in Upper North Sydney, in the municipality of the county of Cape Breton, N.S., by depositing, on the 7th day of September, 1918, a plan and description of the land so taken, in the office of the Registrar of Deeds for the said county.

The defendants' title is not contested.

The Crown expropriated 15.2 acres out of a farm of 52 acres, adjoining the town boundary of North Sydney, upon which the defendants Musgrave were carrying on a small milk business, with eight heads of cattle. These defendants Musgrave, owners of the farm, had in May, 1918, entered into a verbal agreement with the defendant Gannon whereby permission was given the latter to install a piggery upon a portion of the farm, and to use some small portion of the land for growing feed—in all about 5 acres—and the owners were to get the fertilizer from the piggery. Gannon installed a piggery in May, 1918, sowed feed, employed labour at different wages for some time, and the defendant H. C. Musgrave received as much as \$200 of these wages.

The two defendants Musgrave on the one hand, and the defendant Gannon on the other, sever in their defence. The defendants Musgrave claim the sum of \$1,200 and the defendant Gannon claims the sum of \$7,090.

When the piggery was in full operation and seed in the ground, the Crown's officers came upon the ground and ordered Gannon, without previous notice, to get the pigs off the premises. Hence the damage claimed by defendant Gannon, and they began their work of installation by tearing down fences, hauling stone and heavy material over the ground. In the result all crops were destroyed and some of the pigs lost. Gannon closed up his business and realized as best he could. This sudden expropriation resulted in heavy loss to all defendants. The surface of the land, when

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abandonment took place, was left useless for a time for farming purposes and the expropriation terminated Gannon's business.

The Crown having expropriated the land in question on the 7th September, 1918, on the 4th April, 1919, under the authority of section 23 of The Expropriation Act, duly abandoned the same. By exhibit No. 2, it further appears that, in July, 1921, the Crown, alleging and reciting the above related circumstances, tendered in full compensation the sum of \$600 to the three defendants, without severing the amount coming to any of them. The defendants having separate and distinct interest were entitled to a separate and distinct tender or offer.

This tender of \$600 is renewed, in the offer made by the information, in full satisfaction for *all* damages or injuries caused to the said land, while in possession and occupation of the plaintiff and for all damages resulting from the user of the said land and the entry upon the same. Subsection 4 of section 23 of The Expropriation Act which allows the Crown to abandon land already expropriated, provides as follows:—

4. The fact of such abandonment or reversion shall be taken into account, *in connection with all the circumstances of the case*, in estimating or assessing the amount to be paid to any person claiming compensation for the land taken.

Under such circumstances, as decided in the case of *Gibb v. The King* (1), it is the intendment of the above enactment that the damages are to be assessed once for all; and when property has been so taken and returned or abandoned, all damages arising out of the interference with the owners' rights in respect of leasing the land or otherwise, during the period the expropriation was effective, are a proper subject of compensation.

The defendants Musgrave are clearly entitled to recover. I find the defendant Gannon is a tenant at will, and not a trespasser, who has rights in tenancy, and for the reasons recently given by me in the case of *The King v. Goldstein* (2), I have hereafter ascertained this compensation under what I think is a proper basis.

[His Lordship then deals with the amount of compensation, allowing an amount to the owners and tenant separately.]

Judgment accordingly.

(1) [1918] A.C. 915.

(2) [1924] Ex. C.R. 55.