

BETWEEN

GEORGE MACARTHUR.....SUPPLIANT ;

1903

AND

April 6.

HIS MAJESTY THE KING.....RESPONDENT.

AND

PATRICK KEEFE.....SUPPLIANT ;

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Public Work—Injurious Affection—Closing up street—Compensation.*

The properties of the suppliants were injuriously affected by the construction of a public work which obstructed a highway upon which the properties respectively abutted. MacArthur's property was 150 feet from the place of obstruction and Keefe's 240 feet. The suppliants' properties instead of being respectively situated as they were formerly, on a main thoroughfare, were, by the change affected by the construction of the public work, situated at the extreme end of a street closed up at one end, and forming a *cul de sac*.

*Held*, that in so far as the value of the properties in the hands of anyone, and used for any purpose to which they could be put, was lessened, the suppliants ought to recover therefor, but not for personal inconvenience occasioned by the obstruction.

**P**ETITIONS OF RIGHT for damages to lands resulting from the construction of the Cardinal Canal, a public work of Canada.

The facts are stated in the reasons for judgment.

February 5th, 1903.

The cases were now argued at Ottawa.

*D. B. MacLennan, K.C.*, for the suppliants, relied on the following cases as establishing the right of the

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suppliants to recover damages: *McQuade v. The King*; (1) *The Queen v. Barry* (2); *Metropolitan Board of Works v. McCarthy* (3); *Caledonian Ry. Company v. Walker's Trustees* (4).

*F. H. Chrysler, K.C.*, for the respondent, contended that the English cases were not conclusive of the question of the suppliants' right to compensation for injurious affection. The English cases depend upon the construction of statutes which have not been, in many respects, adopted by the Parliament of Canada. He cited *re Stockport &c., Railway Co.* (5); *Fremantle Corporation v. Annois* (6); *London, Brighton & South Coast Ry Co. v. Truman* (7); *Eagle v. Charing Cross Ry. Co.* (8); *Mayor of Montreal v. Drummond* (9); Imperial Statutes, 8 & 9 Vict. c. 18, 8 & 9 Vict. c. 20; *Hodges on Railways* (10); *Chamberlain v. West End of London and Crystal Palace Railway Co.* (11); *Iveson v. More* (12); *Chichester v. Lethbridge* (13); *Pain v. Patrick* (14); *Benjamin v. Storr* (15); *Ashley v. Harrison* (16); *Winterbottom v. Lord Derby* (17); *Fritz v. Hobson* (18); *Chaplin v. Westminster* (19); *Bigg v. London* (20); *Lyons v. Fishmonger's Co.* (21); *Moore v. Esquesing* (22); *Falle v. Tilsonburg* (23); *Vandecar v. East Oxford* (24); *Atkinson v. Chatham* (25); *Ricketts v. Markdale* (26); *Beckett v. Midland Ry. Co.* (27); *Powell v. Toronto*,

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| (1) 7 Ex. C. R. 318.   | (14) 3 Mod. at p. 293.    |
| (2) 2 Ex. C. R. 333.   | (15) L. R. 9 C. P. 406.   |
| (3) L. R. 7 H. L. 243. | (16) 1 Esp. 48.           |
| (4) 7 App. Cas. 259.   | (17) L. R. 2 Ex. 316.     |
| (5) 33 L. J. 251.      | (18) L. R. 14 Ch. D. 543. |
| (6) [1902] A. C. 213.  | (19) [1901] 2 Ch. 329.    |
| (7) 11 App. Cas. 45.   | (20) L. R. 15 Eq. 376.    |
| (8) L. R. 2 C. P. 638. | (21) 1 App. Cas. 662.     |
| (9) 1 App. Cas. 384.   | (22) 21 U. C. C. P. 285.  |
| (10) P. 334.           | (23) 23 U. C. C. P. 167.  |
| (11) 2 B. & S. 605.    | (24) 3 Ont. A. R. 131.    |
| (12) 1 Ld. Raym. 486.  | (25) 29 Ont. R. 518.      |
| (13) Willes, 71.       | (26) 31 Ont. R. 610.      |

(27) L. R. 3 C. P. 94.

*Hamilton & Buffalo Ry. Co.* (1); *Bucclench v. Metropolitan Board of Works* (2); *Ricket v. Metropolitan Board of Works* (3); *Bell v. City of Quebec* (4); *North Shore Ry. Co. v. Pion* (5); *Parkdale v. West* (6); *Nash v. Glover* (7); *Glasgow Union Railway Co. v. Hunter* (8); *Salmond's Jurisprudence* (9); *Story v. New York Elevated Rd. Co.* (10); *Lahr v. Metropolitan Elevated Rd. Co.* (11); *Proprietors of Locks & Canals v. Nashua &c Rd. Co.* (12); *Haskell v. New Bedford* (13); *Roberts v. Northern Pacific Rd. Co.* (14).

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THE JUDGE OF THE EXCHEQUER COURT now (April 6th, 1903,) delivered judgment.

The suppliants, alleging that certain lands and premises, of which they are respectively seized, have been injuriously affected by the construction of the Cardinal Canal, a public work of Canada, bring their petitions to recover compensation for the damages sustained. The evidence in Macarthur's case, so far as it is applicable, is, by the agreement of parties, to be read in Keefe's case, and the two cases were argued together, the questions of law arising therein being the same.

The lands and premises in question, consisting of village lots with residences thereon, are situated in the village of Cardinal, in the County of Grenville. This village is situated on the north bank of the river St. Lawrence. Its population is about one thousand four hundred, and its chief industry is the Edwardsburg

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| (1) 25 Ont. A. R. 209.                                   | (8) L. R. 2 Sc. App. 78.                     |
| (2) L. R. 3 Ex. 306; L. R. 5 Ex. 221; L. R. 5 H. L. 418. | (9) P. 164.                                  |
| (3) L. R. 4 Q. B. 358.                                   | (10) 90 N. Y. 122.                           |
| (4) 5 App. Cas. 84.                                      | (11) 104 N. Y. 268.                          |
| (5) 14 App. Cas. 612.                                    | (12) 104 Mass. 1.                            |
| (6) 12 App. Cas. 602.                                    | (13) 108 Mass. 208.                          |
| (7) 24 Gr. 219.                                          | (14) 158 U. S. 1; 15 S. C. Rep. (U. S.) 756. |

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Starch Works, a considerable portion of its population finding employment in these works. Prior to the year 1897 the canal ran between the village and the River St. Lawrence. In that year the construction of a new canal running through the north part of the village was commenced. At that time Dundas Street was the principal street, running east and west through the village. It also formed part of the main highway along the north side of the St. Lawrence River, connecting the towns and village situated on that side of the river. By Dundas Street and the roads connecting therewith communication was had to and from Cardinal and the country to the west, north and east of the village. Among these roads was one mentioned in the evidence as the Nine Mile Road, that led to the Grand Trunk Railway Station and thence north into the country. In the construction of the new canal that part of the main highway along the north side of the River St. Lawrence that has been spoken of as Dundas Street was diverted; and a new highway constructed along the north bank of the canal. That is, Dundas Street was cut off and closed up by the canal both at the east and the west end of the village. That part of the village that was south of the new canal having theretofore been a portion of the mainland, became in reality an island. Dundas Street was cut off in the autumn of 1897. During 1898 a surface crossing from the village to the north of the canal was maintained. Then when the excavation of the prism of the canal made that impossible, a temporary bridge was put up and used for about a year. Then a permanent draw-bridge was constructed. This bridge, which is approximately half way between the two points of intersection of the canal and Dundas Street, was opened for traffic in January, 1900. As stated, it is a draw-bridge. During the season of navigation it

has to be opened from time to time to allow vessels to pass through the canal. In addition it is crossed by a branch or siding from the Grand Trunk Railway to the Edwardsburg Starch Works. This branch is used for freight traffic only. This use of the bridge and the opening of the draw interferes from time to time with its use as a carriage way, and makes it a less convenient way from and to the village than it otherwise would be. No doubt what was thought to be sufficient and best, having regard to the expense involved, was done. That is not called in question here. But the result is that while before the construction of the public work the means of communication between the village of Cardinal and the country adjacent was free and uninterrupted, it is now restricted and not altogether convenient. This gives rise to more or less personal inconvenience to those who have occasion to go to or from Cardinal on foot or in carriages. But that is not a matter for compensation. There is no question about that. For the suppliants it is conceded that they cannot recover any damages for any such personal inconvenience. But they say that apart from that their properties situated on Dundas Street at the west end of the village, near the point where the street is obstructed by the canal, have been injuriously affected by its construction; and that for the damages thereby occasioned they are entitled to compensation. It appears that at or near this point the canal cut off not only Dundas Street, but the Nine Mile Road that has been spoken of as leading from Dundas Street to the Grand Trunk Railway Station. Macarthur's property is one hundred and ninety feet from the place where these ways are obstructed by the new canal, and Keefe's two hundred and forty. The distance from Macarthur's property to any place reached by the Nine Mile Road was increased by the

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change of way 2,145 feet, and to any place on the main highway leading westerly to Prescott, 2,470 feet. The distance to any point east of the village was increased somewhat, but not considerably. Then the properties, instead of being situated as they were formerly on a main thoroughfare, are now at the extreme end of a street that is closed up, forming a *cul de sac*. So far as these things constitute a personal inconvenience only to the occupiers of the premises, they are not, as has been stated, to be taken into account. But they have, according to the evidence of the witnesses on both sides of the case, another effect. The value of the properties, either for occupation, for letting, or for sale, are thereby lessened. And that is what one would naturally expect to be the case. Everyone knows that the value of property is determined to a greater or lesser extent by its situation and relation to ways and conveniences. There can, I think, be no doubt that the properties in question here have been injuriously affected by the construction of the public work mentioned, and that their value, in the hands of anyone, and used for any purpose to which they could be put, has been thereby lessened. But the fact that lands are injuriously affected by the construction of a public work does not necessarily give rise to a claim for compensation that can be sustained. There are many cases in which that may happen where no claim to compensation can be successfully set up. From decided cases text-writers have deduced four propositions for determining when a claimant may or may not recover compensation in such cases, no portion of his lands being taken. Where part of his lands are taken different considerations arise and different rules prevail. The propositions referred to are variously stated in different text books, but there is a general agreement as to the result of the cases. The

following propositions are given in *Browne & Allan on Compensation* (1) to determine whether the right to compensation exists or not under the Acts of the Parliament of the United Kingdom dealing with the subject. To give a right to compensation—

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1. The damage caused must be occasioned by reason of what has been authorized by the legislature, and not from other acts;

2. The damage must arise from that which would, if done without the authority of the legislature, have given rise to a cause of action;

3. The damage must arise from a physical interference with some right, public or private, which the owners or occupiers of property are by law entitled to make use of in connection with such property, and which gives an additional market value to such property apart from the uses to which any particular owner or occupier might put it;

4. The damage must arise from the execution of the works and not from their subsequent use.

The present cases are within the fourth proposition, and nothing more need be said as to that. They are also within that part of the third proposition which relates to a physical interference with a public right that the occupiers were entitled to make use of in connection with their properties and which gave to the latter an additional market value apart from the particular uses to which any particular owner or occupier might put them. Reference will be made to the difference between a physical interference with a public right and a private right when the second proposition is under consideration, and it will not be necessary to refer more at length to the third proposition.

The first proposition and the second are the most important in determining the cases now under con-

(1) Ed. 1896, pp. 129, 131 & 136.

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sideration, and to these should be added a third equally important; and that is that no right to compensation arises unless the statute gives it. If the Act complained of is authorised by the statute there is no remedy for the injury occasioned, unless the statute gives a remedy. That is well settled, one of the latest cases being *Fremantle v. Annois* (1).

To sustain the suppliants' claims in the present cases it is necessary therefore, in addition to the matters that have been briefly disposed of, to find—

1. That what was done by the authority of the Minister of Railways and Canals was authorized by Parliament;

2. That there is statutory provision for compensation for damages occasioned by what was so done;

3. That such damages arose from what would, if done without the authority of Parliament, have given rise to a cause of action for the injury complained of.

The words "for the injury complained of" are not given in the rule as laid down in the text-book from which it is taken. But they are, I think, to be implied. It is not sufficient, it seems to me, that what was done would, but for the statute, have given rise to a cause of action; but that it would have given rise to a cause of action for the particular injury from which the damages arose.

The authority of the Minister of Railways and Canals to divert the main highway along the St. Lawrence River and to cut off and close up Dundas Street in the manner mentioned is to be found in paragraph (f) of the 3rd section of *The Expropriation Act* (2), by which it is, among other things, provided that the Minister may by himself, his engineers, superintendents, agents, workmen and servants, divert or

(1) [1902] App. Cas. 213.

(2) 52 Vict. c. 13, amended by 62-63 Vict. c. 39.



alter as well temporarily as permanently the course of any roads, streets or ways, or raise or sink the level of the same in order to carry them over or under, on the level of, or by the side of, the public work, as he thinks proper; but before discontinuing or altering any public road, or any portion thereof, he shall substitute another convenient road in lieu thereof.

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Then as to compensation the following provisions occur in *The Expropriation Act*, by which, as seen, the minister's authority is given. By the fifteenth section certain persons are given authority, among other things, to contract and agree with the minister as to the amount of compensation to be paid for land taken or acquired, or for damages occasioned thereto, by the construction of any public work. By the twenty-second section of the Act it is provided that the compensation money agreed upon or adjudged for any land or property acquired or taken for, or injuriously affected by, the construction of any public work, shall stand in the stead of such land or property. By the twenty-fourth section of the Act every person who has any estate or interest in any land or property acquired or taken for, or injuriously affected by, the construction of any public work, is required on demand to furnish the minister with particulars of such estate or interest. By the twenty-fifth section of the Act provision is made for the filing of an information by the Attorney-General of Canada in any case in which land or property is acquired or taken for, or injuriously affected by, the construction of any public work. Among the things to be set forth in any such information are the date at which, and the manner in which, such land or property was injuriously affected. By the twenty-ninth section of the Act interest may be allowed on the compensation money from the time when the land or property was acquired, taken, or

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injuriously affected. Before leaving this Act attention ought perhaps to be called to the definition of the word "land" as used in the Act. By paragraph (f) of the second section of the Act that expression is defined to include among other things "all real rights, easements, servitudes and damages, etc., for which compensation is to be paid by Her Majesty under the Act."

Then by clause (b) of the sixteenth section of *The Exchequer Court Act* (1) it is provided that the Exchequer Court shall have exclusive original jurisdiction to hear and determine every claim against the Crown for damage to property injuriously affected by the construction of any public work. Such a claim may, as we have seen, come before the court by the exhibiting of an information as provided in *The Expropriation Act*. It may also come before the court, as in the present cases, by a petition of right, or it may be referred to the court by the head of the department in connection with the administration of which it arises (2). By the thirty-first section of *The Exchequer Court Act* (3) a rule is given for determining the compensation to be made to any person for land taken for or injuriously affected by the construction of any public work. By the thirty-second section of the Act last cited it is provided that the court in determining the amount to be paid to any claimant for any land or property taken for the purpose of any public work, or for injury done to any land or property shall estimate or assess the value or amount thereof at the time when the land or property was taken or the injury complained of was occasioned. Then by the third section of the Act 52 Victoria, chapter 38, provision is made whereby in assessing future damages arising from

(1) 50-51 Vict. c. 16.

(3) 50-51 Vict. c. 16, and 54-55

(2) *The Exchequer Court Act*, s. 23. Vict. c. 26, s. 7.

injury to land or property injuriously affected by the construction of any public work, the court may take into account works that may have been constructed in mitigation of such damages. I have gone over these provisions at some length because it was contended that there was no statutory authority for giving compensation in the cases under consideration. On the contrary there is, it seems to me, statutory authority in a proper case for awarding damages where land is injuriously affected by the construction of a public work. That perhaps would appear more clearly than it does from the provisions that have been referred to if such provisions were traced back to their origin in the statutes from which they have been derived. But there is, I think, no occasion for that. It seems to me that there is no reasonable doubt about the matter; and from the language used in the Acts to which reference has been made the fair inference is that it was the intention of Parliament to give compensation to anyone whose land was taken for, or injuriously affected by, a public work in any case in which he would under the Acts of the Parliament of the United Kingdom be entitled to compensation.

Then, would what was done here, if done without the authority of Parliament, have given rise to a cause of action for the injury complained of, that is for the depreciation in the value of the lands in question because of the cutting off and closing up by the new canal of Dundas Street and the Nine Mile Road? That, it seems to me, is a question not free from difficulty. The right of the owners of the lands and premises in question here to go therefrom to Dundas Street was a private right appurtenant to such lands and premises. Any interference with a right of that kind would without doubt give rise to a cause of action. But that did not occur in the present cases. When how-

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ever the owners were once on Dundas Street the right to use it, and to go in one direction or the other, was a public right which they enjoyed in common with all His Majesty's subjects. They may suffer more from the obstruction of the street than others because they have occasion to use it oftener; but that is a difference in degree, not in kind. It is not, it seems to me, in that aspect of the cases that we find the special damage that gives rise to the cause of action that will support the claim to compensation. The special damage is to be found in the fact that what was done was an interference with a public right, the enjoyment of which in connection with the lands and premises in question give the latter a value that is taken away or lessened by the interference with such public right. And it seems to me that it is not now possible to say that such an interference with a public right will not give rise to a cause of action, and, where that right is taken away, sustain a claim to compensation under the statute. That, I take it, is the result of cases of the highest authority. (*Chamberlain's Case* (1); *McCarthy's Case* (2); and *The Caledonian Railway Company v. Walker's Trustees* (3). In the case last mentioned Lord Blackburn (4) referring to the case of *The Metropolitan Board of Works v. McCarthy*, expressed the opinion that it decided that the right of access by a public way to land is a right attached to the land, and that if an obstruction to the public right of way occasions particular damage to the owner or occupier of that land by diminishing its value, the action which he might bring for that particular damage would be an action for an injury in respect of the land. And in this connection it seems to me that an observation made by Mr. Justice Taschereau (now

(1) 2 B. &amp; S. 617.

(2) L. R. 7 H. L. 243.

(3) 7 App. Cas. 259.

(4) *Ibid.* p. 299.

Chief Justice Sir Elzéar Taschereau) sitting in this court in the case of *Paradis v. The Queen* (1), is in point: "It is settled law" he said "upon the authority of *Trimble v. Hill* (2) in the Privy Council, and *City Bank v. Barrow* (3) in the House of Lords, that where a colonial legislature has re-enacted an Imperial statute, and the latter has been authoritatively construed by a Court of Appeal in England, such construction should be adopted in the courts of the colony." Now while the English statutes respecting compensation for damages where lands are injuriously affected have not been re-enacted by the Parliament of Canada, certain expressions to be found in such statutes have been adopted therefrom by Parliament and used in Acts dealing with like subjects here; and the meaning which has come to be attached to such expressions and the effect that has been given to them by the highest authorities in England is the meaning that should be assigned and the effect that should be given to them in Canada.

What I have said is sufficient, it seems to me, to dispose of these cases in the suppliant's favour. There is no question here of the obstruction of the highway being too remote from the suppliants' properties to sustain a claim to compensation. In the case of *Walker's Trustees* (4), it was said by the Lord Chancellor (Lord Selborne) that "a right of access by a public road to particular property must no doubt be proximate and not remote or indefinite, in order to entitle the owner of that property to compensation for the loss of it." And in that case it was held that a right of access at a distance no more than ninety yards was direct and proximate and not indirect or remote. Speaking of the limitation in the case of *The Queen v. Barry* (5) where

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(1) 1 Ex. C. R. 193.

(3) 5 App. Cas. 664.

(2) 5 App. Cas. 342.

(4) 7 App. Cas. 285.

(5) 2 Ex. C. R. 353.

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among others, the cases mentioned are referred to, it is stated that in *McCarthy's* case (1) the point at which access to the River Thames was obstructed was three hundred and seventy-two feet distant from the premises affected. That, it was said on the argument of these cases, is an error; that the distance was only twenty feet. But I find that in the argument of the case of *Walker's Trustees* Sir Farrer Herschell then the Solicitor-General, made the distance in round numbers four hundred feet. In *McCarthy's* case (2) he is reported to have said (3):—"The dock interfered with"—which it is to be noticed is not contiguous to the house, but twenty feet away—was only of use as leading to the highway of the river. So what truly damaged the claimant there was the stopping up of the entrance to the river, which was 400 feet away. The stopping up the end stopped it up the whole way." And Lord Blackburn, discussing the same question (4) said that from the part of the judgment in *McCarthy's* case read by him it sufficiently appeared that the judgment "did not proceed on the ground that the obstruction to the water highway was opposite to the plaintiff's premises, but this appears more clearly by a reference to the case at large which shows that the damage was all occasioned by making the embankment across the mouth of the draw-dock more than 400 feet from the plaintiff's premises, and so cutting him off from the Thames. Probably when that was done, the rest of the dock now rendered useless was filled up, though it is not stated in the case; but whether it was filled up or not the damage to McCarthy's premises would be the same." By reference to the special case stated in *McCarthy's* case it will be seen that the plaintiff's premises were 20

(1) L. R. 7 H. L. 243.

(3) 7 App. Cas. 271.

(2) L. R. 7 H. L. 243.

(4) 7 App. Cas. pp. 298, 299.

feet distant from the head of Whitefriar's dock; that the dock was 352 feet long; and that the embankment that permanently stopped up and destroyed the dock was carried along the foreshore of the Thames, that is, as I understand it, at or near the river end of the dock. That would make the distance between the plaintiff's premises and the obstruction at least 372 feet. As a matter of course the obstruction of the outer end of the dock rendered access to it at its head of no use or value, even if the dock were not filled up. But in the same way access to the portion of Dundas street west of the suppliants' properties is of no use or value to them as a means of going from their properties either in a westerly or northerly direction. The effect of the obstruction extends beyond the point at which it occurs.

With regard to the proposition that to entitle the owner to recover compensation the obstruction of the way must be proximate and not remote from the premises affected, it will, it seems to me, be found that mere distance will not afford a test altogether satisfactory. If that alone is made the determining consideration a line must in cases such as those now under consideration be drawn somewhere. If such a line were drawn at a point short of that at which lands and premises ceased to be diminished in value, that is injuriously affected, by the obstruction of the public way, no good reason could I fear be shown for giving compensation to the owner on one side of the line and denying it to the owner on the other side. Such a limitation would be arbitrary and without reason. If however distance from the obstruction is not to be the only test, and the line between those who may recover and those who may not recover compensation is to be drawn at the point at which lands and premises cease to be injuriously affected and diminished in

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value, then we have, I think, so far at least as concerns this class of cases, come back to a position not easily distinguishable from that for which Lord Westbury so stoutly, but unsuccessfully, contended in the case of *Ricket v. The Metropolitan Railway Company*, namely, that the expression "injuriously affected" as used in the statutes referred to, means "damnously affected" only, and that while an individual is not entitled to compensation for personal inconvenience, he is entitled thereto if by the construction of the work he sustains loss in respect of the ownership or occupancy of lands or tenements, whether at common law there would have been a right of action or not (1). The rule having been settled the other way that there shall be no compensation where at common law there would have been no right of action, there has perhaps been a tendency to enlarge the class of cases in which an action would lie. But if one should go so far as to say that there would, but for the statute, be a right of action in any case where lands are diminished in value by the construction of a work which obstructs or destroys a public way that gave an additional value to such lands, and that in such a case the owner is entitled to compensation, a conclusion would be reached that might have been arrived at more directly and without reference to any cause of action, by saying, as Lord Westbury did, that in such a case the statute gave a right to compensation. In *Walker's Trustees* (2) Lord Blackburn said:—"Now I do not dispute that an obstruction to a highway may be so distant from lands that no one could reasonably find that the lands were appreciably damaged by the obstruction, but I think it unnecessary to try to give a definition of that distance. It is enough to say that in this case the distance is not too great." In the present cases

(1) L. R. 2 H. L. 202.

(2) 7 App. Cas. 209.



the distances from the suppliants' premises to the point of obstruction of the public way are less than they were in either *McCarthy's* case or that of *Walker's Trustees*; and there is no occasion to attempt any solution of difficulties that suggest themselves but do not directly arise in the cases under consideration.

In the statement of defence in Macarthur's case it is alleged that the new canal has been constructed on the route prayed for by the suppliant and other residents and property owners of the village of Cardinal, in a petition to the Minister of Railways and Canals. But no evidence has been adduced to support the allegation. The Crown has not sought to avail itself of any such defence, and it is unnecessary to consider whether it would be a good defence or not.

In Keefe's case it appears that the house on the lands affected was put up in the year 1897. Preparations for building it were made in the autumn of 1896 and it was finished in August or September of 1897. The first plan and description, by which the right of way for the canal was acquired, was filed on the 14th of May, 1897, and it is contended that if compensation is to be made to Keefe it must be limited to damages to his lands and premises other than his house. It seems to me, however, that the contention cannot be sustained. There was no reason why in 1896 Keefe should not add to the value of his land and premises by putting a house thereon. That was a reasonable and natural use to make of the property. Then in 1897 there was no good reason, so far as I can see, why he should not go forward and carry out the plans that he had formed, and finish the work which had been commenced. At that time he did not know, and had no means of knowing, what the conditions would be on the completion of the canal. If bridges had been constructed across the canal at both points of inter-

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section with Dundas street, none of the property in the village would have been injuriously affected in the manner now under consideration. Probably Keefe's premises would not have been appreciably affected if a bridge had been put across at the westerly intersection of the canal and Dundas street. He could not tell how these matters would be ultimately determined, and he was not bound to wait and see.

With regard to the amount of compensation to be awarded in Macarthur's case, the evidence of the witnesses he called would indicate that the depreciation in the value of his premises from the causes mentioned is about fifteen hundred dollars. Mr. James W. Thompson, a witness called by the Crown, put the depreciation at seven or eight hundred dollars. Mr. Thompson is a fair minded and reasonable man and his opinion carries weight. But it is largely a matter of speculation. Nothing has happened to show even approximately what the real depreciation is. In that case I do not feel bound to adopt the views of any of the witnesses. I think if the compensation is fixed at twelve hundred dollars in Macarthur's case, that amount to be assessed as of this date and without interest, the assessment will be a fair one. In Keefe's case, in a like manner, I assess the compensation to be made to him at six hundred dollars.

The costs will in each case follow the event.

*Judgment accordingly.*

Solicitors for the suppliants: *Maclennan Cline & Maclennan.*

Solicitors for the respondent: *Adam Johnston and P. K. Halpin.*

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