THE KING ON THE INFORMATION OF THE ATTORNEY-GENERAL OF CANADA,

PLAINTIFF;

1914
May 9.

AND

GEORGE DOUGLAS TAYLOR, JESSIE WHITE, HELEN G. SPITTAL, ALEXANDER B. TAYLOR, NORMAN TAYLOR, MARGARET HODGES, ALLAN H. TAYLOR, and ANDREW M. TAYLOR,

DEFENDANTS.

Expropriation of Lands—Will—Gift to son subject to privilege of limited use of property by brothers and sisters—Interpretation—Compensation under The Expropriation Act.

The Crown expropriated certain property given by will to G. D. T. by his father in the following words:—"I give devise, and bequeath unto my son G. D. T., my farm property in the township of M., known as Blackhall, for his own use, subject to the right of the rest of my family to use the sam for the summer as heretofore, as I know he will allow them to do."

Held, that the duty imposed under the will upon G. D. T. to allow the other members of the testator's family to use the property attached only while the property in specie was in G. D. T.'s possession, and did not become changed into a claim to the compensation money under *The Expropriation Act* upon the lands being taken by the Crown.

Dougherty v. *Carson*, 7 Gr. 31 referred to.

THIS was an information exhibited by the Attorney-General of Canada for the expropriation of certain lands for the purposes of a rifle range.

The facts are stated in the reasons for judgment.

May 8th and 9th, 1914.

The case was heard before the Honourable Mr. Justice Audette at Ottawa.

A. H. Armstrong for the plaintiff.

A. E. Fripp, K.C., for defendant G. D. Taylor.

J. E. O'Mara for the other defendants.

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AUDETTE, J., now (May 9th, 1914) delivered judgment.

I do not think any benefit can be derived in my reserving this case for further consideration. The facts are presently most vividly impressed upon my mind.

The defendant, George D. Taylor, appears to have acted herein in a perfectly free and untrammelled manner. He is a man with as good intelligence as the average man of his education, having had the advantage, indeed, of a full elementary course at the public schools of this city. He is a man of common sense with good intelligence, quite able to transact and look after his own business.

There is nothing in the evidence to show that when he gave the option in question he was unduly influenced, or that he was unable to act satisfactorily for himself—and that further more in getting $8,000.00, the amount of the option, he is not paid the full value of his property.

The option is the best intimation of what he thought his property was worth at the time, and the Court cannot overlook that aspect of the case under the circumstances. Much more so, indeed, when even part of the claimant's evidence bears that out.

The defendant was perfectly satisfied with the $8,000.00 until about one year after when he heard a higher rate per acre had been paid others, but he is overlooking the fact that such higher rate was paid for much better land than his.

Dr. Scott paid $100. an acre for a piece of Wilson's farm,—but one must not overlook that where land is sold in small quantity, a higher price is always obtainable.

Mr. Rudcliffe testified it would cost $2,500. to renew the buildings on the property. That is not the test.

It is what are those buildings worth at the date of the expropriation, taking the wear and tear and depreciation, into consideration.

Lebel paid $50. for one acre in this neighbourhood for very desirable location, and as for his qualification as valuator he admits he has no experience in real estate.

Ritchie, the real estate agent from Aylmer, says he thinks the 40 acres could be divided into building lots—he could not speak as to the 98 acres.

Wilson, the neighbour, sold his 38 acres at $100. an acre,—but he values Taylor's 40 acres at $200.00 an acre. There is no justification for that discrimination under the evidence,—as the weight of the evidence shows Wilson's land to be better and of higher value.

Then we have the witness Smith who parted with his land, immediately adjoining Taylor's lands, at $53., and values Taylor's now at $80. That witness did not convince me by his manner of reasoning.

The evidence on behalf of the Crown establishes clearly that Richardson acted in a perfectly irreproachable manner in his relations with Taylor when obtaining the option in question. His dealings appear to have been straight and above board,—no fault to find with him. His valuation is also quite rational.

Bower Henry values about 3 acres of the 36 at $75. and the balance at $20. to $30. and the 98 acres at $20. to $25.

Argue values 10 to 12 of the 36 acres at not more than $75. and the balance at $40. an acre with not much prospect to sell for building lots. The 98 acres would be to pasture only young cattle. If these lands were alongside a good farm they could be used in connection therewith and would be worth $20. to $25. an acre.

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The access to the Taylor property militates against its desirability for building purposes.

Watts values 3 acres of the 40 acres lot at $60. and the balance at $20.—buildings at $2,100. The 98 acres unfit for residences—he values at $15. an acre; good for pasture for young cattle—40 acres have no value for building purposes because of transportation.

McCreary values the 36 acres and says 3 to 4 of them are tillable and are worth $75. an acre and the balance at $20. Buildings at $2,000. The 98 acres he values not to exceed $20. an acre.

Farrow says it is not advisable to put the 36 acres on the market, no such value in near future. Ninety-eight acres no value for subdivision, and he values the buildings at $2,000. to $2,500.

In the amount of the option Taylor received a very liberal compensation. The prospective capabilities and potentiality of the beach to be turned into building lots for summer residences are too remote to affect the actual market value,—such prospective value is not within a reasonable near future.

The defendants, outside of George D. Taylor, claim under the codicil to a will from the common *auteur* to them all. The part of the codicil upon which they rely and base their claim, reads as follows: "I give, devise and bequeath unto my son George Douglas Taylor, my farm property in the Township of March, known as "Blackhall" for his own use, subject to the right of the rest of my family to use the same for the summer as heretofore, as I know he will allow them to do."

Dealing with the claim of the other defendants as arising under the codicil, I find, following the decision

in the case of *Dougherty* v. *Carson*, (1) their claim cannot be charged to the detriment of the fee. The defendant George Taylor does not here try and get rid of his property to free himself from the obligation towards his brothers and sisters. He is forced to sell and that power to alienate is not denied him under the will. The obligation to receive his brothers and sisters existed so long as George remained in occupation and was the owner, but no longer.

Indeed this comparatively light burden of allowing his brothers and sisters to come during the summer upon the farm would press much more heavily upon George if a certain sum is to be set aside as a monied value of the right of occupation, and it is highly improbable that the testator intended to impose upon George the greater burden which is one that would probably consume a material part of the value of the lands.

Provision of this nature, unless the language of the will imperatively demands it, should not be held to require the burden cast upon the beneficiary to be made any greater than it actually is. To hold that such a provision, as the one in question in this case could be converted into a large capital fixed upon expectation of life of the brothers and sisters,—would be to impose a burden much greater than the testator contemplated should be borne.

There will be judgment as follows:

1st. The lands mentioned and described in the information are declared vested in the Crown from the date of the expropriation.

2. The compensation for such land is fixed at the amount of the option given by George D. Taylor, namely the sum of $8,000. which the said Taylor is

(1) 7 Gr. 31.

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entitled to be paid upon giving to the Crown a good and satisfactory title.

3. The said George D. Taylor is the only defendant entitled to any portion of the said compensation money —none of the other defendants having any right to the said money, their claim being hereby dismissed without costs to either of the parties.

The Crown will have costs on the issue of compensation as against defendant George D. Taylor, and the said costs are hereby fixed at the sum of $150.

Judgment accordingly.

Solicitor for the plaintiff: *A. H. Armstrong.*

Solicitors for defendant G. D. Taylor: *Fripp & McGee.*

Solicitors for other defendants: *O'Mara & Graham.*