IN THE EXCHEQUER COURT OF CANADA.

1919
November 24.

IN THE MATTER OF THE PETITION OF RIGHT OF

MARGARET HOWARD, JOHN W, STERLING AND JAMES CARSON, SURVIVING EXECUTORS OF THE LAST WILL AND TESTAMENT OF DONALD A. SMITH, BARON STRATHCONA AND MOUNT ROYAL, DECEASED.

SUPPLIANTS;

AND

HIS MAJESTY THE KING,

RESPONDENT,

AND

THE MUNICIPALITY OF THE COUNTY OF PICTOU,

THIRD PARTY.

Expropriation—Government Railway Act, 1881, *section* 18—*Vesting of property in the Crown—Title to land—Statute of Limitations —Disability—Absence from province—Gentleman's residence—Interest.*

Held,—Under the provisions of section 18 of the *Government Railway Act,* 1881, the land taken for the purpose of a railway became absolutely vested in the Crown, not only by the deposit of the plan and description in the registry office, but also by the actual possession assumed by the Crown.

2. That the title to the land does not become vested in the Crown by the mere survey of the land, as provided by section 5 of the *Government Railway Act.*

3. That legislation with respect to the limitation of actions is a matter of procedure and is therefore retroactive in its operation.

4. Article 33 of the *Exchequer Court Act* provides that laws relating to prescription, between subject and subject in force in any province shall apply to proceedings against the Crown, and the present claim coming under section 9, ch. 167 of R.S.N.S. 1900, is only

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prescribed by 20 years. Possession was taken by the Crown not later than November 28th, 1887, date on which the road was completed, but the owner was under disability, owing to his absence from the province, until the year 1909, date of his first visit to the province after the expropriation of the property. The petition was filed in 1916.

Held,—That, under the circumstances, the claim was not barred by the *Statute of Limitations*.

5. The fact that the land taken was part of a gentleman's country residence takes it out of the class of farm lands and gives it special value which is an element to be considered by the Court.

6. That where the expropriating party has done all that could reasonably be expected of it to settle for the land taken, and that the delay in prosecuting the recovery of the claim may justly have been construed as an abandonment of the same, interest will only be allowed from the date on which the Petition of Right was filed in Court.

THIS is a Petition of Right to recover the value of land taken by the Crown for the use of the Intercolonial Railway in the Province of Nova Scotia.

The case came on for trial before the Honourable Mr. Justice Audette at the City of Halifax, N.S., on the 9th, 10th and 11th days of June, 1919.

E. M. Macdonald, K.C., *L. A. Lovett*, K.C., and *J. W. Macdonald*, for suppliants.

J. McG. Stewart & *J. W. Mackay* for respondent.

R. T. MacIlreith, K.C., & *J. W. Ross*, K.C., for third party.

The facts are stated in the reasons for judgment handed down by the honourable Judge, which are printed below.

AUDETTE, J., now (24th November, 1919), delivered judgment.

This is a Petition of Right, whereby it is sought, on behalf of the heirs of the late Lord Strathcona, who departed this life, testate, on or about the 21st

January, 1914, to recover the sum of $10,000, as representing a claim for damages in respect of, and including the value of, the land taken for and in possession of the Crown and used as part of the Branch line of the Intercolonial Railway from Stellarton to Pictou, in the Province of Nova Scotia.

The question of title is admitted by the Crown, subject to the right to plead that the suppliants' title is barred by the *Statute of Limitations,* or in other words, that the property at the time of the taking by the Crown, belonged to Lord Strathcona, and that the Crown reserves its right to plead the *Statute of Limitations* for the compensation claimed in respect thereof.

The particulars of the claim are as follows:

(a) The value of the land taken in so far as the soil is concerned	$ 1,500.00
(b) Damages for severance	2,500.00
(c) Damages for destroying access to land fronting on the harbour of Pictou	2,000.00
(d) Damages for interfering with access to the harbour by road ...	1,000.00
(e) General depreciation to whole property as a result of the expropriation	3,000.00
	$10,000.00

It has been eventually admitted that the area actually taken by the Crown is 5.08 acres. This question of discrepancy as to the area, is explained by Mr. McKenzie's evidence. Under the first plan which was transmitted from Moncton to Pictou for

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registration, on the 6th June, 1886, but which was not registered, and which was filed as Exhibit "H" herein, it appeared that the Crown at first took 5.97 acres; but this was subsequently changed upon representation made by Lord Strathcona, to 5.08 acres, under another plan, which was in turn sent for registration on the 13th June, 1886, meeting with the same fate as to registration.

The Crown by its statement of defence admits having taken the land in question herein for "the right of way and the use" of the Government railway which was being constructed at the time by the Dominion Government, and further alleges the registration of a plan and description of these lands, but has failed to prove it. The defence further pleads the *Statute of Limitations* to which reference will be hereafter made.

As far back as the years 1884 or 1885, the citizens of Pictou started an agitation in favour of building a branch line of railway from Stellarton to Pictou, and a committee of five citizens was appointed. Mr. Fraser, who at one time was Chairman of the Committee, testified that he went to Ottawa making due representation to that effect. Free from all unnecessary details, in the result it was agreed between the Municipality of the County of Pictou and the Crown, that the latter would build the railway, if the County would provide for the right of way by paying the amount necessary to acquire the lands. In accordance thereto, the necessary resolutions were passed by the municipality giving it authority to do so, which authority was afterwards confirmed by *Acts of the Legislature of Nova Scotia,* viz., 49 Vict. ch. 106 and 52 Vict. ch. 84.

The County, as will appear from Exhibit "G", acquired the necessary land for the railway from the owners therein mentioned and settled with them, excepting, however, with Lord Strathcona, whose compensation of $350, fixed at the time but not accepted, appears on the last page of the list. A draft deed for such land and damages was forwarded to Lord Strathcona. By Exhibit "P", on the 27th November, 1886, he acknowledges the receipt of such deed, and he states he has "no recollection of any such ar-"rangement as to the amount of consideration "money for the land and property so taken," adding that upon proper crossings and fencing would greatly depend the price he would expect to receive. No settlement was ever arrived at, the matter of compensation having been left in suspense ever since.

The first survey was made in 1885—and Mr. Fraser says the first survey destroyed the Norway property. Upon representation being made by Lord Strathcona, a second and final survey was made, the plan whereof was completed by Mr. McKenzie on the 13th June, 1886, and transmitted from Moncton to Pictou for registration,, but no such registration was ever made.

The construction of the road started in 1886, when the first sod was turned on the 3rd June of that year. While the first surveys were made in 1885, the change in the same with respect to the present property was only made on the 13th June, 1886, and the work of construction was started east of the Norway property.

Now it is contended that since the plan and description were not deposited in the Registry Office that the land did not vest in the Crown, as provided

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by sec. 10, of *The Government Railway Act*, 1881. However, by sec. 2, of ch. 13 of 49 Vic., the Minister is given, with respect to the Pictou Town Branch, all the powers and authority vested in him by the *Government Railway Act*, 1881. By sec. 10, the lands taken are to be laid off by metes and bounds, and from both plan "H", and the evidence of witness McKenzie, that appears to have been done. Then the section proceeds and says that where "no proper deed or conveyance of these lands to the Crown is made", etc., etc., *or where for any other reasons the Minister shall deem it advisable,* a plan and description of such land shall be deposited in the Registry office, whereby such land shall become vested in the Crown. No plan and description were so deposited, probably the Minister did not deem it advisable to do so, and this court has no power to sit in review of such statutory discretion of the Minister.

However, by sec. 18 of the *Government Railway Act,* any claim in respect of the compensation for the property taken, *as respects the Crown,* is converted into a claim for compensation money, and is void as respects the land and property themselves, which shall, *by the fact of the taking possession* thereof, become and be absolutely vested in the Crown, subject always to the determination of the compensation to be paid and to the payment thereof when such conveyance agreement or award shall have been made.

Therefore, following the decision in the case of *The King v. The Royal Trust Co., of Canada,*[1] I find that under the provisions of sec. 18, of the *Government Railway Act,* 1881, the land taken for the

[1] (1908), 12 Can. Ex. C. R. 212.

purposes of the Branch of the Intercolonial Railway, became absolutely vested in the Crown at and from the time of possession being taken on its behalf. The case of *The Queen v. Clarke,*[1] cited at bar has been satisfactorily distinguished in the latter case, for the obvious reason that the owners therein had remained in possession.

Moreover, the court has additional specific jurisdiction to hear the present case, and the suppliants have the right to set up this claim, under the provisions of sec. 19 of the *Exchequer Court Act.* wherein it is *inter alia,* provided that it (the Court) "shall have exclusive original jurisdiction in all "cases in which *the land, goods, or money* of the subject are in the possession of the Crown." See upon this point *Clode on Petition of Right,*[2] and the numerous cases therein cited; *Robertson on Civil Proceedings,*[3] *Halsbury, The Laws of England.*[4]

Further, it must be found, following the decision in the case of *McQueen v. The Queen,*[5] that the title in the property did not become vested in the Crown by the mere survey of the land as provided by sec. 5 of the *Government Railway Act;* but, that it did so by the actual possession taken some time later, when the construction of the road was started and completed by November, 1887.

Coming now to the question of the *Statute of Limitations* set both at bar and by the pleadings, I will deal first with sec. 30 of the *Government Railway Act,* 1881. It appears from the evidence that the suppliants' land in question was first laid out by

[1] (1896), 5 Can. Ex. C. R. 64.
[2] pp. 68, 70.
[3] pp. 332-333.
[4] vol. 1, p. 18; vol. 10, pp. 26 & 27.
[5] (1887), 16 Can. S. C. R. 1, 28, 102, 103.

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metes and bounds by the second plan made on the 13th June, 1886, that the first sod was turned on the 3rd June, of that year, and that the construction was started east of the Norway property, and further that the road was completed by the 28th November, 1887. We have no evidence establishing at what actual date the possession of the land was taken. It is only established that the land in question must have been taken between the 13th June, 1886, and the 28th November, 1887. From Exhibit "P", it would appear that Lord Strathcona received for the first time, on the 27th November, 1886, an intimation that a draft deed had been prepared for the land required for the railway, and in answer to the same he wrote that the amount of consideration money he would expect to receive would depend, among other things, upon the several crossings being made safe and commodious. The answer, in respect of these crossings, practically comes only by way of the undertaking filed by the Crown on the 9th September, 1919,—the matter having remained in abeyance in the meantime with respect to the settlement of the claim.

The evidence establishes that the lands were taken between the 3rd June, 1886, and the 28th November, 1887. That the work of construction did not start at Norway. There is every reason to believe that the construction of the Branch was worked from Stellarton, where a railway was already in operation. In all probability the possession of the road was possibly taken in 1886, but also possibly in 1887, and possibly late in 1887. There is no such evidence, however, upon which I could name one day more than another between the dates above mentioned, with any certitude, and upon which may depend the

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life or death of the claim. I conclude that the benefit of that incertitude should be given to the conjecture that the lands might have been taken possession of only one month or one month and a half before the operation—taking in consideration that in all probability its construction was worked to Pictou from the other end, from Stellarton.

Moreover, there is no definite date to anchor on, between the 13th June, 1886, and the 28th November, 1887,—the date of laying out the property taken by metes and bounds and the date when the line was opened for traffic—whereby one could say that possession was taken on a given day. All we know is that possession was taken between these two dates. In view of all this, it would be impossible to declare the limitation mentioned in sec. 30 of the *Government Railway Act,* of 1881, as binding, because the circumstances contemplated by that section do not apply to the special circumstances arising in the present instance. The County first deals direct with Lord Strathcona, and then on the 1st October, 1887, previous to the completion of the road, the *Exchequer Court Act* came into force, and under sec. 33 thereof, as above mentioned, it is enacted that the laws relating to prescription and the limitation of actions, shall be the law of the province; and further, by that very Act, the *Act respecting the Offical Arbitrators* is repealed and thereby the official arbitrators are abolished. In the light of these facts it would seem that sec. 30 of the Act, 1881, could not be made applicable—the arbitrators were then abolished, replaced by the court, and no necessity arose to file the claim with the department. Furthermore, the proviso at the end of section 30

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would also help to harmonize matters by suggesting the origin of sec. 33 of the *Exchequer Court Act*, which invokes the laws relating to limitation of actions in the Province as embodied in chapter 167 of the R.S.N.S., 1900.

Legislation with respect to the *Statute of Limitations*, is legislation dealing with procedure and is therefore retroactive.[1]

Moreover, if this claim, as hereinbefore mentioned is made at common law for land that finds its way into the hands of the Crown, under colour of eminent domain or expropriation, and is considered under the provisions of sec. 19, of the *Exchequer Court Act*, again the local law respecting the limitation of actions applies and again we are driven to chapter 167 of R.S.N.S., 1900.

As the question of disability resulting from the absence from the province arises with respect to Lord Strathcona, who never resided at Pictou, but who visited the place at some time, it is important to establish from the evidence the date at which he was at Pictou to properly adjudicate upon the question of prescription. Five witnesses testified upon this point:

Witness *Webster*, who was stationmaster at Pictou up to 1918, remembers that Lord Strathcona came to Pictou in 1909 by special train and left the same day. *E. M. Macdonald*, K.C., also testified that at no time did Lord Strathcona reside at Pictou, but that he came there in 1885, and was not there again until the 20th September, 1909, when he came by

[1] The *Idun* case, [1899] P. 236; *The Sydney & Cape B. Co. v. Harbour Commissioners of Montreal* (1916), 15 Can. Ex. C. R. 1; 20 D. L. R. 828, affirmed (1914), 20 D. L. R. 990, 49 Can. S. C. R. 627; and *The Royal Trust Co. v. The Baie des Chaleurs Ry. Co.* (1908), 13 Can. Ex. C. R. 9.

special train, arriving in the early morning and remaining at Pictou a couple of hours. He further says that Lord Strathcona was not at Pictou in 1886. Witness *R. A. Fraser* says he saw Lord Strathcona at Pictou previous to 1885, and in 1886 and 1909. He says Lord Strathcona was at Pictou on the 22nd May, 1886, previous to the turning of the first sod, and that he also saw him there in September, 1909. *Donald McLeod,* who was at one time working at Norway, under caretaker Gillis, says he saw Lord Strathcona three times at Norway, but he is unable to mention any date, once about 35 years ago (1919), the first time in August, the second time in the fall and the third time he was digging potatoes. Witness *Mary Campbell,* a daughter of Gillis the caretaker at Norway, who was married in 1892, says she remembers Lord Strathcona coming to Norway. She has no idea of the year,—about six years before she was married. It is impossible to build up anything with any satisfaction, upon the testimony of these two last witnesses. The most that can be found is that Lord Strathcona was in Pictou in 1885, on the 22nd May, 1886,—although the last date is challenged by witness Macdonald,—but it is absolutely established he was there in 1909.

The lands in question were taken between the 13th June, 1886, and the 28th November, 1887. Therefore, Lord Strathcona's visits in 1885 or in May, 1886, have no bearing upon this question of limitation, but he was unquestionably in Pictou in 1909.

It was held in *Ross v. The G. T. Ry. Co.*[1] that the right to compensation for land taken by a railway

[1] (1886), 10 O. R. 447.

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company is not barred short of twenty years, and that decision was followed in the case of *Essery v. The G. T. R. Co.*[1] See also *Roden v. City of Toronto.*[2] In the case of *The Cork & Bandon Ry. Co. v. Goode,*[3] an action of debt by a railway company against one of its members, for calls under the *statute,* it was held that a declaration in debt upon a *statute,* is a declaration upon a specialty, and if that were applied to the present case, the claim would fall, as a specialty, under sub. sec. (c) of sec. 2 of ch. 167, of R.S.N.S., 1900, and would be prescribed by 20 years, also subject to sec. 3 and following the same Act in respect of disability.

However, I find that the present claim comes under sec. 9 of that Act, and is subject to a limitation of 20 years, and that as Lord Strathcona was under disability resulting from his absence from the province, that if we add 10 years to the date of his visit, in 1909,—his first visit to the province after the expropriation of the property, that will take him to 1919. The Petition of Right was filed in the court on the 31st July, 1916,—(it is not disclosed when it was lodged with the Secretary of State in pursuance of sec. 4 of the *Petition of Right Act*)—therefore the claim is not barred by the *Statute of Limitations.*

Mention should perhaps be made that the suppliants relied upon the two letters of the Minister of Railways, filed as Exhibits 8 and 10, as interrupting the prescription, and that Counsel for the Third Party contended that the Crown could not proceed with the construction of the railway until the right of way was acquired. This last argument, although

[1] (1891), 21 O. R. 225.
[2] (1898), 25 A. R. (Ont.) 12.
[3] (1853), 13 C. B. 824.

plausible is not sound, because the agreement between the Crown and the Municipality was that the latter was only to provide for the right of way by paying the amount necessary to acquire the land, and the land owners had all been dealt with and paid with the exception of the present claimant. *De minimis non curat lex,*—This trifling difficulty was no reason to stop the construction of a railway for the welfare of a large community.

In the result the Crown took the suppliants' land and became liable therefor either under the *Railway Act,* 1881, or under sec. 19 of the *Exchequer Court Act.* The respondent took the land and the suppliants have a right to compensation. *De Keyser's Royal Hotel Co. v. The King,*[1] *Ross v. G. T. R.*[2] The suppliants' right to compensation is a statutory right and the respondent's liability is a statutory liability. This right and this liability still exist and nothing has happened to destroy them. It is even contended in some States of the American Commonwealth that a claim for compensation for land expropriated cannot be taken away by the *Statute of Limitations.*[3]

Coming to the question of the assessment of the amount of compensation it may be advisable, as a prelude, to state in a summary manner the result of the evidence adduced upon the value of the property in question, and the damages arising from the expropriation. On behalf of the suppliants, witness *Ellis,* speaking of values of to-day, values the property at $35,000 to $40,000, without the railway,—

[1] (1919), 35 T. L. R. 418.
[2] (1886), 10 O. R. 447.
[3] *Delaware, L. & W. R. Co. v. Burson,* (1869), 61 Penn, 369; *McClinton v. Pittsburg, Fort Wayne & Chicago R. Co.,* (1870), 66 Penn. 404.

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and with the railway at $17,000 to $22,000,—adding that his values are within two years, and he takes it that the land left by the railway on the water front is of no value and is no good. Then Senator *Casgrain* places a value of $25,000 upon the property before the coming of a railway, and $15,000 since,—valuing land and damages at $10,000. He also admits that the coming of the railway to Pictou is an advantage that would add to the value of property. Witness *E. M. Macdonald* contends the property has depreciated in value by one-third from the coming of the railway. On behalf of the Crown witness *Fraser* says that on the appraisal by their committee, they allowed $20 an acre for cultivated land, and $5 for woodland, and that as far as he was concerned he had nothing to do with the valuation of the suppliants' property. Senator *Tanner* contends that the assessment of the Norway property is above its value and that the sum of $350 is and has always been a sufficient sum for the value of the land including the severance, which does not amount to much. He would allow $50 an acre, that is $250 for the land and $100 for damages, in all $350. He says that in 1886 there was no demand for such property, and that there has been no increase in the value of real estate at Pictou in the last 30 years. Witness *Ives,* heard on behalf of the Third Party, says that the assessed value of lower price property, say $1,400, is pretty near actual value, and that the higher price property is very small because we have no people to buy. The assessment is as much as it would bring at auction, and Lord Strathcona's property is assessed at all it could bring. That the business conditions at Pictou in 1886 were no better than they are to-day.

A bank had failed there in 1883,—there was also the Campbell failure, and there were no industries there to employ people.

Suffice it to say on the question of values testified to, that the suppliants' evidence in that respect is so exaggerated and inflated, that it is beyond the pale of serious and earnest consideration especially if we consider the purchase price, the absence of fluctuation in the real estate market and the value placed by the estate itself upon the property for succession duty. He who wants to prove too much proves nothing. Moreover, these values are not values given as of the date of the expropriation. On the other hand, I am unable to share Senator Tanner's view with respect to the damages to the property. His estimate is too low. Has it been offered to make up the amount appraised by the County years ago?

Undoubtedly the suppliants' property is a very desirable country residence for a gentleman of means. As was very justly said by Sir Glenholme Falconbridge, C.B., K.B., in delivering judgment in appeal re *Ruddy v. Toronto Eastern R. W. Co.*[1] "It is not a "question of farm land to be valued at so much per "acre as such. Nature had provided an ideal site "for the particular purpose which the appellant had "in view, and which he was carrying out with great "judgment, viz., for a country residence of a man of "means and good taste. It appears in evidence, and "it is a self-evident proposition, that if it should "become necessary or desirable for the appellant to "sell the property, the existence of the railway, run-"ning where it does, would be a fatal objection in "the mind of the only class to which he could reason-"ably look to find a purchaser."

[1] (1915), 7 O. W. N. 796.

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While these observations, *mutatis mutandis*, are very apposite to the present case, it must not be overlooked that this judgment was reversed by the Judicial Committee of His Majesty's Privy Council[1] upon the misapprehension by the Court of Appeal of Ontario, that the two arbitrators who had made an award for $3,500, as against that of the dissenting arbitrator for $13,500, had proceeded upon a wrong principle in not taking into consideration the elements above referred to. Their Lordships of the Privy Council found that the majority award had duly considered the same and restored their finding. In the result this judgment establishes that such elements of compensation must be taken into consideration, but that they must not be used to unduly inflate the same.

This property of an area of 113 acres was bought in 1881 and 1882 (See Exhibits 1 and 2) for the total sum of $6,990. It was assessed in 1885 at $11,500, and from 1886 to 1895 at $15,000. It was appraised for the purpose of succession duty in 1914 at the sum of $10,000.

The taking of this land from the suppliants results in a severance of the property, with a small parcel of land on the river side. Adjoining thereto he procured, in 1902, long after the date at which we have to assess, from the local Government, a grant for a water lot; the value of such grant it is unnecessary to consider, but it is only mentioned to show what in futurity could be made of the piece severed. It appears from the evidence that two railway-crossings were, at some date, in the early period given to the suppliants; but they had not been maintained, and

[1] (1917), 33 D. L. R. 193.

while the remains at the time of the trial, were still perceptible, they were not of practical use. Therefore, the Crown, at trial, filed an undertaking, whereby it has undertaken to restore and maintain in good condition the two farm crossings indicated on a plan thereunto attached.

This undertaking has a very appreciable value, as was mentioned by Lord Strathcona in the correspondence of record and must be taken into consideration, as well as the advantage resulting from the construction of the railway, making Pictou ever so much more accessible,—in assessing the compensation. The value of this property must be arrived at from the standpoint of its value to the owner and not to the party taking it, and its market value must be ascertained looking at it from that view, realizing that that class of property is not in demand, it is the smaller class of property with reasonable rentals that is mainly in demand. For want of demand it is also well known that large properties of considerable value as far as the cost of construction and improvement are concerned realize as a rule but small prices.

Taking all the circumstances into consideration and duly weighing the evidence, I have come to the conclusion to allow for the land taken, the sum of fifty dollars an acre, making the sum of $254.00, an amount which under the evidence would appear in excess of what was allowed for farm lands, and for all damages resulting from such expropriation arising from the severance and all other legal elements of compensation at the sum of $500.00, making in all the sum of $754.00.

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Dealing with the question of interest it would appear to be out of the question under the circumstances to allow interest for a period running as far back as 1886 or 1887. The Municipality at the time of the taking of these lands, did all that was reasonable to be expected from them. They had the land appraised, and a deed prepared which was sent to Lord Strathcona for execution. He never executed it. His laches in doing so or in prosecuting his claim for such a long period, coupled perhaps with the general knowledge of the public-spirited character of Lord Strathcona, must with justification have led the Municipality to believe he had abandoned the idea of making a claim. However, it is unexpectedly revived at his death. *Vigilantibus non dormantibus equitas subvenit.* This delay in prosecuting the recovery of the claim, which may justly have been construed as an abandonment of the same, affords a reason for me to allow interest upon the compensation money only from the date of the institution of the present action, namely the 31st July, 1916, to the date hereof.

The suppliants will be entitled to their costs as against the Crown. No costs as between suppliants and the Third Party, who is not to be taken as a co-defendant, although the suppliants have filed written pleadings joining issue with the Third Party.

The Crown will be entitled to recover from the Third Party the amount recovered by the suppliants in capital, interest and costs, together with the costs on the Third Party issue.

Therefore there will be judgment, as follows: viz:

1st. The lands in question herein are declared vest-

ed in the Crown from the date of the taking possession thereof.

2nd. The compensation for the land taken and for all damages resulting from the expropriation is hereby fixed at the sum of $754 with interest thereon from the 31st July, 1916, to the date hereof.

3rd. The suppliants, upon giving to the Crown a good and satisfactory title, free from all mortgages or encumbrances whatsoever, are entitled to be paid by and recover from the respondent, the said sum of $754 with interest as above mentioned.

4th. The suppliants are further entitled to the performance and the due execution of the works mentioned in the undertaking above referred to.

5th. The suppliants are furthermore entitled to recover from and be paid by the respondent, the costs upon the issue with the Crown.

6th. This Court doth further order and adjudge that the Crown do recover from and be paid by and recouped from the Third Party the above mentioned sum of $754 with interest and costs, together with the costs on the issue as between the respondent and the Third Party, unless the Crown would, under the circumstances, elect to forego such last mentioned costs.

Judgment accordingly.

Solicitors for suppliants: *Macdonald, Ives & McGillivray.*

Solicitor for respondent: *John W. Ross.*

Solicitor for third party: *John W. Mackay.*