

1899 HER MAJESTY THE QUEEN ON }
April 5. THE INFORMATION OF THE ATTORNEY- }
 GENERAL FOR THE DOMINION OF }
 CANADA } PLAINTIFF;

AND

JAMES WALLACE, WILLIAM A. }
 ROSS, JOHN O'LEARY AND } DEFENDANTS.
 MARY KELLY..... }

Expropriation—Tender—Sufficiency of—Costs—Mortgagees.

Where the amount of compensation tendered by the Crown in an expropriation proceeding was found by the court to be sufficient, and there was no dispute about the amount of interest to which the defendant was entitled, but the same was not tendered by the Crown although allowed by the court, costs were refused to either party.

2. Where mortgagees were made parties to an expropriation proceeding and they had appeared and were represented at the trial by counsel, although they did not dispute the amount of compensation, they were allowed their costs.

INFORMATION for the expropriation of certain lands, at Ottawa, for the purposes of a Dominion Rifle Range.

The facts of the case are stated in the reasons for judgment.

March 6th, 7th and 8th, 1899.

J. M. Clarke and A. W. Fraser, for the plaintiff, cited the following cases and authorities: *The Queen v. Fowldes* (1); *Vézina v. The Queen* (2); *Cripps on Compensation* (3); *Penny v. Penny* (4); *Boom Company v. Patterson* (5); *Benning v. Atlantic and North West Railway Co.* (6); *McLeod v. The Queen* (7).

(1) 4 Ex. C. R. 1

(4) L. R. 5 Eq. 235.

(2) 17 Can. S. C. R. 1.

(5) 98 U. S. R. 403.

(3) 3rd ed. pp. 112-113.

(6) 5 M. L. R. (S. C.) 136.

(7) 2 Ex. C. R. 106.

M. O'Gara, Q.C. and W. Wyld relied on the following: *Burton v. The Queen* (1); *The Queen v. Moss* (2); *Straits of Canseau Marine Railway Co. v. The Queen* (3); *The Queen v. Barry* (4); *Kearney v. The Queen* (5); *Mayor of Montreal v. Brown* (6); *Stebbing v. Metropolitan Board of Works* (7); *Paint v. The Queen* (8); *James v. Ontario and Quebec Railway Co.* (9); *Crandall v. Mott* (10); *Burrill v. Corporation of Marlborough* (11); *Metropolitan Board of Works v. McCarthy* (12); *Brown v. Commissioner of Railways* (13); *McCauley v. City of Toronto* (14); *Cowper Essex v. Acton* (15); *The Queen v. Brown* (16); *Aitken v. McMeekan* (17); *Re Bush* (18).

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THE JUDGE OF THE EXCHEQUER COURT now (April 5th, 1899), delivered judgment.

On the 16th of May, 1898, the Crown took, for the purposes of a Rifle Range, a portion of lot number 24, in the first concession, Ottawa front, of the township of Gloucester in the County of Carleton and Province of Ontario, of which the defendant, James Wallace, was owner, subject to a mortgage to the other defendants. The lot contained in all about eighty acres, or a little more than that. The part taken for the Rifle Range contained according to the plan and description filed sixty-one acres and twenty-seven hundredths of an acre, and the Crown offered to pay the defendants \$6,127.00, or a hundred dollars an acre for the land

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| (1) 1 Ex. C. R. 87. | (9) 15 Ont. A. R. 11. |
| (2) 5 Ex. C. R. 30. | (10) 30 U. C. C. P. 63. |
| (3) 2 Ex. C. R. 113. | (11) 29 U. C. Q. B. 119. |
| (4) 2 Ex. C. R. 355. | (12) L. R. 7 H. L. 243. |
| (5) 2 Ex. C. R. 21. | (13) 15 App. Cas. 240. |
| (6) 2 App. Cas. 168. | (14) 18 Ont. R. 416. |
| (7) L. R. 6 Q. B. 37. | (15) 14 App. Cas. 153. |
| (8) 2 Ex. C. R. 149 and 18 Can. S. C. R. 718. | (16) L. R. 2 Q. B. 630. |
| | (17) [1895] App. Cas. 310. |
| | (18) 14 App. Cas. 73. |

1899 taken for its value and for damages to the remaining portion of the land. On the eighteen or nineteen acres left to this defendant is a barn, worth, it is said, in connection with the whole lot about a thousand dollars, and now, it being larger than is necessary for what is left, about five hundred dollars. The defendant, Wallace, alleges that a true measurement of the lands in his possession that were taken for the Rifle Range would show that more has been taken than what has been mentioned, the difference being something near an acre. With reference to the compensation he declines to accept the amount offered by the Crown, and claims a sum of \$20,000. This is the main question in controversy. With reference to the principle on which that compensation should be assessed, the case presents nothing unusual or of any difficulty. There is of course the inevitable conflict of opinion as to values; but what I am well satisfied of is that the property as a whole was not in May, 1898, worth more than eight thousand dollars. That, with all the improvements, and having regard to any use that could be made of it, and its situation and any reasonable prospective value, would be, I think, an outside figure at that time. Now if from that sum we take the amount of \$6,127 that the Crown offers to pay we have the sum of \$1,873 to represent the present value of the eighteen or nineteen acres of land left with the barn thereon; and it would seem that making any necessary allowance for the depreciation of this portion of the lot by reason of the proximity of the rifle range it would in the state of cultivation it is in and with the barn be worth that amount at least, so that it seems to me that the amount offered by the Crown is sufficient even if the portion expropriated should happen to be about an acre in excess of that for which the offer was made, a matter which is not perhaps very clearly established

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one way or the other. To the sum of \$6,127 should be added \$331.88 for interest from the 16th of May, 1898, making in all the sum of \$6,458.88.

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There will be a declaration :—

(1). That the lands mentioned in the information are vested in the Crown.

(2). That the sum of \$6,127 with interest from the 16th day of May, 1898, is sufficient compensation to the defendants for the lands taken and for all loss or damage mentioned in the fifth paragraph of the information ; and

(3) That out of such compensation money is to be paid in the first instance the amount of the mortgage mentioned in the information and the interest thereon, the actual amount to be determined when the minutes of judgment are settled ; and the balance is to be paid to the defendant James Wallace.

The defendants, the mortgagees, are, I think, entitled to their costs.

With reference to the defendant Wallace I ought not, I think, to give him costs, as I have found the amount offered to him sufficient compensation at the time of the taking, and there was no controversy apparently about the interest subsequent to that date to which I have also found him entitled. At the same time I do not see how I can give costs against him, as he was entitled to such interest, and there has been, so far as I see, no tender or offer on the part of the Crown to pay it. As between the Crown and the defendant James Wallace there will be no costs ; each party bearing its and his own costs.

Judgment accordingly.

Solicitor for plaintiff: *A. W. Fraser.*

Solicitors for defendant: *O'Gara, Wyld & Gemmell.*

Solicitor for defendant mortgagees: *J. Bishop.*