

THE COUNTY OF INVERNESS } APPELLANT;
(DEFENDANT) }

1905
*Dec. 14.
*Dec. 22.

AND

JAMES MCISAAC (PLAINTIFF) RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

*Municipal corporation—Railway aid—Construction of agreement—
Expropriation—Description of lands—Reference to plans—
R.S.N.S., 1900, c. 99—3 Edw. VII. c. 97 (N.S.).*

A municipality passed a resolution by which it agreed to pay for lands required for the right of way, station grounds, sidings and other purposes of a railway as shewn upon a plan filed under the provisions of the general railway Act. At the time of the resolution there were four such plans filed, each shewing a portion of the land proposed to be taken for these purposes and including, in the aggregate, a greater area than could be expropriated for right of way and station grounds under the provisions of the Acts applicable to the undertaking of the railway company. The Legislature passed an Act confirming such resolution. To an action by the owner of the land taken, on an award fixing the value of that in excess of what could be so expropriated, the corporation pleaded no liability on account of such excess and also, that there was no specific plan on file describing the land.

Held, affirming the judgment appealed from (38 N.S. Rep. 76) that the first defence failed because of the Act confirming the resolution and, as to the second, that the four plans should be read together and considered to be the plan referred to in such resolution.

APPEAL from the judgment of the Supreme Court of Nova Scotia (1) affirming the judgment of Mr. Justice Fraser by which the plaintiff's action was maintained with costs.

*PRESENT:—Sir Elzéar Taschereau C.J. and Girouard, Davies, Idington and MacLennan JJ.

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The municipal corporation of the County of Inverness, N.S., passed a resolution, in January, 1902, by which it agreed to aid the construction of a railway by providing and paying for lands, at Broad Cove Mines, required by the railway company for right of way, station grounds, sidings or other railway purposes as included on a plan on file under the provisions of the Acts by which the company had authority to expropriate lands for the purposes of their undertaking. This resolution was confirmed and declared binding upon the municipality by a special statute, 3 Edw. VII. ch. 97 (N.S.). At the time when the resolution was passed there were four such plans filed, as complying with the terms of the general railway Act, each shewing portions of the lands so required; they were supplementary and complementary to each other and, taken together, shewed the whole of the land taken from the plaintiff (about fifty-one acres) in respect of which the present controversy arose. Upon an arbitration two awards were made; the first in regard to the ground occupied by the permanent way and station building, about seven acres, being the maximum which could be expropriated for such purposes under the Nova Scotia general railway statutes; and the second for the remainder of the lands, about forty-four acres, taken from the plaintiff for terminal purposes of the railway at Broad Cove Mines.

The municipality refused to pay the amount of the second award on the ground that the area thus taken was in excess of the quantity of land which might be expropriated under the statutes applicable to the railway, and that no such area being shewn upon any specified plan it, consequently, was not included in the reference made to the plan mentioned in the resolution.

An action to recover the amount of this second award was maintained at the trial by Mr. Justice Fraser, and his decision was affirmed by the judgment now appealed from.

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Newcombe K.C. and *A. A. Mackay*, for the appellant.

Mellish K.C. and *H. Y. MacDonald*, for the respondent.

The judgment of the court was delivered by

DAVIES J.—I think this case turns entirely upon the meaning of the resolution passed by the Municipality of Inverness in January, 1902, and which was subsequently, in 1903, confirmed and made law by the Legislature of Nova Scotia.

The previous filing of the plans by the railway company may not have operated to pass the title of the whole fifty-one acres of McIsaac's land, attempted to be expropriated by the railway company, by reason of the limitations imposed upon this mode of expropriation by the general railway Act. I do not find it necessary to express any opinion on this point. But, when the statute of 1903 was passed confirming the municipal resolution and making it a part of the statute law of the province, the question is reduced to the meaning of that resolution and enactment and whether or not they provided for and included the lands of the respondent which the company had clearly attempted to expropriate and take.

As to the actual taking, surveying and fencing of the fifty-one acres there is no doubt, and as to the filing of a plan by the company, shewing the whole fifty-one acres to have been taken many months before

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the resolution was passed, there is no dispute. The only question argued at length before us was whether this plan so filed could be considered as within the specific terms of the resolution.

Four distinct plans had been filed, and I have no difficulty in acceding to the argument of Mr. MacDonald, adopting, on this point, the judgment of Fraser J., that the whole four plans must be read together as they are capable of being read, each being in some respect supplementary and complementary to the other, and together constituting the plan referred to in the resolution as the railway plan on file. If this is done and the enactment of the resolution construed, as it must be, as a statutory compact, binding alike on the company and the municipality, then all doubt as to the quantity of plaintiff's land taken is at an end.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *Jas. D. Matheson.*

Solicitor for the respondent: *H. Y. MacDonald.*
