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*June 17.
*June 24.

THE QUEBEC, JACQUES-CARTIER ELECTRIC COMPANY (DEFENDANTS) ..... APPELLANTS;

AND

HIS MAJESTY THE KING (*ex rel.* THE ATTORNEY-GENERAL FOR CANADA) (PLAINTIFF) ..... RESPONDENT.

THE FRONTENAC GAS COMPANY (DEFENDANTS) ..... APPELLANTS;

AND

HIS MAJESTY THE KING (*ex rel.* THE ATTORNEY-GENERAL FOR CANADA) (PLAINTIFF) ..... RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

"Expropriation Act," R.S.C., 1906, *c.* 143, *ss.* 8, 23, 31—*Abandonment of proceedings—Compensation—Allowance of interest—Construction of statute—Practice—Taxation of costs—Solicitor and client—Reimbursement of expenses—Interpretation of formal judgment—Reference to opinion of judge.*

While the owners still continued in possession of lands in respect of which expropriation proceedings had been commenced under the "Expropriation Act," R.S.C., 1906, ch. 143, and before the indemnity to be paid had been ascertained, the proceedings were abandoned, no special damages having been sustained.

Held, that in assessing the amount to paid as compensation to the owners, under the provisions of the fourth sub-section of section 23 of the "Expropriation Act," there could be no allowance of interest either upon the estimated value of the lands or upon the amount tendered therefor by the Government.

The trial judge, by his written opinion, held that the owners were entitled to be fully indemnified for their costs as between solici-

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

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tor and client and for all legitimate and reasonable charges and disbursements made in consequence of the proceedings which had been taken. The formal judgment provided merely that costs should be taxed as between solicitor and client.

Per Davies, Idington, Anglin and Brodeur JJ.—In the taxation of costs, the registrar should follow the directions given in the judge's opinion to interpret the formal judgment as framed. Duff J. *contra.*

Per Duff J.—The registrar, in taxing costs, is required by law to follow the terms of the formal judgment and it is not open to him to correct it in order to make it accord with his interpretation of the opinion judgment. The court appealed from, however, may correct the formal judgment in so far as it does not express the intention of the opinion judgment.

APPEALS from judgments of the Exchequer Court of Canada by which the defendants, in both actions, were refused claims for interest on the value of lands in respect of which expropriation proceedings had been commenced and subsequently abandoned.

In the month of April, 1912, the Government of Canada gave notice of the expropriation of a strip of land, of which the appellants were owners, and which was required for the purposes of the National Transcontinental Railway. At the same time a plan and book of reference describing the lands were deposited in the office of the registrar of deeds for the County of Quebec within which the lands were situated. The Crown did not enter into possession of the lands, which the appellants continued to occupy, and, in June, 1914, an information was filed in the Exchequer Court of Canada tendering, respectively, certain sums as compensation therefor. The appellants filed answers claiming much larger amounts as the values of their lands. After issue had been joined and some evidence given on behalf of the appellants, the respondent filed an abandonment, as provided by section 23 of the "Expropriation Act," R.S.C., 1906, ch. 143, and

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moved the court for an order granting leave to discontinue proceedings. The appellants then claimed reimbursement of their costs and also that they should be paid interest upon the amounts at which they had valued their lands or, alternatively, upon the amounts which had been tendered as compensation by the Crown. No further evidence was adduced and, on 27th January, 1915, the judge of the Exchequer Court rendered judgment, holding that the appellants had not suffered any special damages in consequence of the proceedings taken, but that they were entitled to their costs, as between solicitor and client, and to be recouped all legitimate and reasonable charges and disbursements. Judgment was formally entered allowing the discontinuance of the proceedings, declaring that the appellants, defendants, were not entitled to recover compensation and that they were entitled to recover from the Crown their costs in connection with the proceedings "to be taxed as between solicitor and client." From this judgment the present appeals were taken.

The questions in issue on the appeal are stated in the judgments now reported.

E. A. D. Morgan for the appellants.

Newcombe K.C., Deputy-Minister of Justice, for the respondent.

THE CHIEF JUSTICE agreed in the judgments dismissing the appeals with costs.

DAVIES J.—These two appeals from the Exchequer Court of Canada raise for determination the same questions and were argued together.

The questions arise out of proceedings having been taken on behalf of the Crown for the expropriation of lands of the respective defendants and the rights and liabilities of the parties — defendants and the Crown — under those proceedings are to be determined by the provisions of the "Expropriation Act."

A plan and description of the lands intended to be taken under section 8 of the Act were duly filed. Subsequently and before compensation was agreed upon or paid the Crown, under section 23, gave notice to the appellants that their lands were not required and were abandoned by the Crown.

The appellants thereupon filed, to the information of the Attorney-General claiming a declaration that the amount tendered by the Crown was sufficient, a new defence claiming to recover interest at 5% upon the sum which should have been awarded them for damages in case the Crown had not abandoned. In the alternative they claimed interest upon the sum the Crown had tendered as the value of the lands taken.

In my opinion, the section of the Act relating to interest being allowed has reference only to cases where the Crown has retained the lands taken and does not extend to or cover cases where, after filing notice of intention to take lands, the Crown has subsequently "abandoned" the lands to the owners under the provisions of the Act. Sub-section 4 of section 23 makes special provision for the assessment of damages in the latter case.

The learned trial judge acting under this sub-section found, as the appellants had always retained "the unlimited user of the lands taken" which were enclosed with fences, that they had not sustained any

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special damage but, under the circumstances, determined that they should be allowed the costs of their action to be taxed as between attorney and client so as to cover

> all the legitimate and reasonable charges and disbursements under the circumstances.

Counsel for the appellants admits that no special damages were sustained by his clients, but contends that they were entitled as of right to interest, as previously stated, whether they have sustained special damage or not.

I cannot for the reasons I have stated accept this contention and am of opinion that the finding of fact of the learned judge as to the actual user and possession of the land, which was fenced in, having continued with the appellants and never having been interfered with, their rights are confined to the damages which might be awarded them under sub-section 4 of section 23. That sub-section directs

> the fact of the abandonment or revesting shall be taken into account, in connection with all the circumstances of the case,

in assessing the damages to be awarded. This the learned judge has done and he has in excluding the claim for interest, in my opinion, acted properly.

No doubt, in the taxation of costs, the registrar will follow the directions of the learned judge as to the basis upon which allowance should be made, and the formal judgment so interpreted will fully protect the appellants.

The appeals, therefore, fail and must be dismissed with costs.

IDINGTON J.—These appeals involve the same points of law and were argued together.

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In each case the respondent had instituted proceedings for the expropriation of land needed for the National Transcontinental Railway, under and pursuant to 3 Edw. VII., ch. 71, and deposited a plan and book of reference on the 23rd of April, 1912, with the registrar of deeds for the County of Quebec.

Informations respectively filed in each case in the Exchequer Court sought to have it declared that a sum named was sufficient compensation for the land taken. Thereupon proceedings were had in each case until the respondent desisted from further proceedings and the court declared the defendant was not entitled to recover from respondent any compensation in respect of such expropriation and abandonment, but that the defendant was entitled to recover from respondent its costs in connection with the proceedings to be taxed as between solicitor and client.

It was further ordered and adjudged that the plaintiff (now respondent) should have leave to discontinue.

These appellants each claim to be entitled to interest upon at least the amount tendered as compensation.

There seems to be rather a curious misconception of legal rights arising out of such proceedings.

The statute under which the respective proceedings were taken rendered that done legal and furnishes the only remedy the appellant can have. It entitles the respondent to withdraw when so advised but provides for the assessment of any damages sustained in consequences of the proceedings.

The learned trial judge has found there were no damages suffered save the costs duly awarded.

Each of these appellants, however, contends that

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it is entitled to interest; though frankly admitting there were no damages suffered and no change of actual possession.

The statute provides for interest being awarded in the case of the proceedings being so continued as to determine a sum due for compensation, but makes no provision for interest upon any imaginary undetermined sum.

There is neither contractual nor statutory basis upon which to award interest.

The references to the Code and to the condition of things arising between an ordinary vendor and purchaser are all beside the question.

These would not help appellants much even if applicable when he, parting with his ownership in the property, had not been deprived of the fruits thereof, but remained in undisturbed possession thereof.

Cases may arise where the party whose property has been claimed in way of expropriation has by reason of its being tied up suffered material damages, but this is not that case.

The appeal as to costs seems hopeless in view of the costs awarded. I agree that the opinion judgment of Mr. Justice Audette should be read to interpret the formal judgment issued.

These appeals should be dismissed with costs.

DUFF J.—The learned trial judge has found first, that the appellants retained possession, and secondly, that they had suffered no loss in consequence of the expropriation proceedings apart from the expenses of preparation for trial thrown away.

These findings are fatal to the claim for interest although it is better to say nothing on the point which

might have arisen had possession been taken by the Crown.

The appellants are entitled, however, and I think the learned judge so held, to be indemnified fully in respect of their costs as between solicitor and client and all costs, charges and expenses properly incurred in preparation for the trial. The formal judgment does not sufficiently provide for that. As the judgment now stands the registrar, bound as he is to follow the terms of the formal judgment, is required by law to tax the costs as between solicitor and client according to the well settled rule, and that will be far indeed from affording the appellants the indemnity to which they are justly entitled.

The law requires the registrar to follow the formal judgment and it is not open to him to correct it to make it accord with his interpretation of the learned trial judge's reasons; and as the judgment is perfectly plain and unambiguous in its terms there is no room for interpretation. Expressions of opinion by judges of this court can add nothing to the powers of the registrar who is bound by law to act upon the judgment as framed construed as the law requires it to be.

These expressions may, however, remove the reluctance the learned judge would probably have felt otherwise in correcting the formal judgment (after appeal to the court) and making it conform to the judgment he in fact pronounced.

The judgment ought to have been formally altered by this court; but nevertheless I think the learned trial judge in the circumstances would be acting

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within his jurisdiction in making the correction this court ought to have made. See *Prevost* v. *Bedard*(1).

ANGLIN and BRODEUR JJ. concurred with Davies J.

Appeal dismissed with costs.

Solicitor for the appellants: *E. A. D. Morgan.*

Solicitor for the respondent: *J. B. Lucien Moraud.*

(1) 51 Can. S.C.R. 629.