

*Privy Council Appeal No. 50 of 1917.*

James Gibb and Another	-	-	-	-	-	-	<i>Appellants,</i>
							<i>v.</i>
The King	-	-	-	-	-	-	<i>Respondent.</i>
The King	-	-	-	-	-	-	<i>Appellan..</i>
							<i>v.</i>
James Gibb and Another	-	-	-	-	-	-	<i>Respondents.</i>

*Consolidated Appeals*

FROM

THE SUPREME COURT OF CANADA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 4TH JULY, 1918.

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*Present at the Hearing :*

EARL LOREBURN.  
LORD BUCKMASTER.  
LORD SUMNER.

[*Delivered by* LORD BUCKMASTER.]

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The main question upon this appeal is as to the existence and extent of the right of the appellants to obtain from the Crown either compensation or damages for land originally appropriated by the Crown for purposes of public improvement, and subsequently abandoned and revested in the appellants. To this, the main subject of the controversy, is added the subsidiary question raised by cross appeal of the Crown as to the jurisdiction of the Exchequer Court to determine the dispute. The case arises under the following circumstances :—

The Government of Canada undertook the construction of the Eastern Division of the National Transcontinental Railway from the City of Moncton, in the Province of New Brunswick, to the City of Winnipeg, in the Province of Manitoba, and, in connection with the work contemplated, made arrangements for the removal of the market in the City of Quebec known as the Champlain Market. The construction of the railway was regulated by a statute known as the National Transcontinental Railway Act, II Edward VII, chapter 71, which provided that

it should be under the charge of certain Commissioners who were created as a body corporate and referred to in the Act as "The Commissioners."

Section 13 of this Statute enabled "The Commissioners" to take possession of land for the purpose of this branch of the railway, and the relevant part of such section is in the following terms :—

"Sec. 13. The Commissioners may enter upon and take possession of any lands required for the purposes of the Eastern Division, and they shall lay off such lands by metes and bounds, and deposit of record a description and plan thereof in the office for the registry of deeds, or the land titles office for the county or registration district in which such lands respectively are situate; and such deposit shall act as a dedication to the public of such lands, which shall thereupon be vested in the Crown, saving always the lawful claim to compensation of any person interested therein."

The predecessors in title of the appellants owned certain land and buildings in the City of Quebec which were situated upon the Champlain Market. Neither their title nor the devolution of interests by which the land is now vested in the present appellants need to be considered on this appeal. The phrase "the appellants" is used throughout by their Lordships to denote the true owners at the relevant and material dates. The Commissioners desired to acquire the appellants' property, and on the 24th January, 1911, a plan and description of the lot were duly deposited in the Registry Office in accordance with the provisions of Section 13 of the Statute already referred to, the result of such deposit being—according to the express terms of the Statute—to vest the lands in the Crown, saving the lawful claim of the owners to compensation.

On the 2nd October, 1911, the Attorney-General of Canada filed an information in the Exchequer Court of Canada offering the sum of 61,747 dols. 75 c. as compensation for the expropriated property, and on the 25th October, 1911, the appellants filed their plea accepting the amount.

Before any further proceedings were taken to obtain payment by the appellants of the agreed amount, the Attorney-General on the 19th March, 1912, filed a discontinuance of this information, on the 27th July of the same year the Ministry of Railways and Canals served on the appellants a notice, dated the 15th July, abandoning the lot, and on the 30th December, 1912, registered this notice in the office of the Registrar of Deeds.

The effect of such registration was, by virtue of a statute to which reference will be made, to re-vest the property in the appellants, who once more became the owners of their estate. They had, in fact, never been divested of possession, and throughout the whole period had managed and dealt with their property to the best advantage, having regard to the altered circumstances which the actual or contemplated destruction of the market involved.

The changed conditions of the surrounding property had, however, as it is alleged, materially affected the capital value of the expropriated land—a result independent of the actual act of expropriation, but consequent upon the other operations which had been undertaken. The appellants accordingly claimed that in the circumstances they were entitled to be paid the compensation originally agreed less the amount to be taken into account by reason of the value of the land when revested in them, so that as the market value of the land when revested had fallen to an extent which the appellants alleged amounted to 31,747 dols. 75 c., they sought to recover this sum, together with a sum of 500 dollars for expenses, subsequently abandoned, and for this purpose filed a petition of right in the Exchequer Court of Canada. This petition was defended by the Crown on the ground that there was no jurisdiction in the Exchequer Court to hear the case, and that no claim for compensation had arisen.

The case was originally heard in the Exchequer Court by Mr. Justice Audette. He decided that there was full jurisdiction to hear the case, but dealt with it as a claim for damages “for the injurious affection of the suppliants’ property as resulting from the expropriation by the Crown of the Champlain Market, or acquiring the same, and the taking down of the Butchers’ Hall and failing to build there a terminal station”; and so regarded he allowed the sum of 3,000 dollars for the interference that had taken place with the appellants’ tenancies.

From this judgment an appeal was brought to the Supreme Court and heard by six Judges. The Chief Justice rejected the view that the action was an action for damages resulting from the abandonment, and thought that the case should be sent back to the Exchequer Court to determine the amount to be paid to the appellants “in payment of compensation due to the land being taken, taking into account in assessing the compensation the abandonment and all other circumstances of the case.”

Mr. Justice Davies accepted the view of Mr. Justice Audette, as also did Mr. Justice Idington. Mr. Justice Duff, however, thought that there was no power to give the notice of the 15th July, 1912, since the statute under which it was given did not apply; but held that, if it were applicable, the claim of the appellants was well founded. Mr. Justice Anglin took the same view as the Chief Justice, and Mr. Justice Brodeur agreed with Mr. Justice Audette; with this difference of opinion, the appeal was dismissed; and from that dismissal this appeal has been brought.

The appellants’ claim depends upon the meaning and true construction of Section 23 of the Expropriation Act Revised Statutes of Canada, 1906, Chapter 143, which is in the following terms:—

“23. Whenever, from time to time, or at any time before the compensation money has been actually paid, any parcel of land taken for a public work, or any portion of any such parcel, is found to be

unnecessary for the purposes of such public work, or if it is found that a more limited estate or interest therein only is required, the minister may, by writing under his hand, declare that the land or such portion thereof is not required, and is abandoned by the Crown, or that it is intended to retain only such limited estate or interest as is mentioned in such writing."

"(2.) Upon such writing being registered in the office of the registrar of deeds for the county, or registration division in which the land is situate, such land declared to be abandoned shall revert in the person from whom it was taken, or in those entitled to claim under him.

"(3.) In the event of a limited estate or interest therein being retained by the Crown, the land shall so revert, subject to the estate or interest so retained.

"(4.) The fact of such abandonment or re-vesting shall be taken into account, in connection with all the other circumstances of the case in estimating or assessing the amount to be paid to any person claiming compensation for the land taken."

It is not necessary to consider the question as to whether this statute has any application to the present case. The proceedings have been conducted on the footing that the statute applied, and it is on the true construction of section 23, and not on the application of the statute, that the case has been argued before their Lordships.

The appellants contend that their claim for compensation, which admittedly arose when the land was originally appropriated by the Crown, is not taken away by the provisions which enable the land to be restored, since the operation of Section 23 is merely to provide that in determining the amount of such claim the effect of the re-vesting is to be brought into account.

On behalf of the Crown it is disputed that Sub-Section 4, section 23, has any application to a case like the present, where the whole land taken has been restored, and it is asserted that if any claim can be maintained it is only in respect of the ownership of the property by the Crown for the limited period between the 24th January, 1911, and the 30th December, 1912, and even this cannot, it is said, be made the subject of the present proceedings.

The latter contention may conveniently be dealt with first, and is disposed of by the Exchequer Court Act, Chapter 140. It is there provided by Section 20 that the Exchequer Court shall have exclusive jurisdiction to hear and determine, among other matters, every claim against the Crown for property taken for any public purpose. This property was taken for a public purpose, and whatever the extent and true measure of the claim may be, it is a claim arising out of such taking of the property, and it is therefore, in their Lordships' opinion, clearly within the provisions of the statute. All the learned Judges before whom this case has been argued are in agreement that there was jurisdiction, either under this statute or independently of its provisions, and their reasoning leaves no room for further controversy.

The only question therefore is as to the construction of

Section 23 of the Expropriation Act, and in particular of Sub-Section 4 of that section. In order to give full effect to the true value of the words in this sub-section, it is necessary to examine the essential purpose of the clause. This is to be found in the earlier sub-sections, which provide that either the whole or any part of a particular parcel of land found to be unnecessary may be abandoned by the Crown and that "such land declared to be abandoned" shall revert in the original owners. It is important to observe that in these provisions no distinction whatever is drawn between the abandonment of the whole or part of any parcel of land; whichever course is taken such land reverts. This consideration affords an important guide for the determination of the final sub-section. It is the fact of "such abandonment or reversion" which is to be taken into account in estimating the compensation, and, if the contention for the respondents were correct, it would be necessary to hold that "such abandonment"—which in its natural meaning, can only refer to the abandonment previously mentioned including both the whole or part—is intended to have exclusive reference to the case where the part only is reverted and not to the case where the whole is given up.

Such construction is contrary to the plain meaning of the words, but it is of course possible that subsequent passages in the same sub-section might lead to the conclusion that the general phrase was intended only to have a partial and limited application. Such indication is, according to the respondents, to be found in the last words of the sub-section, which provide that the fact of abandonment is taken into account in assessing the amount to be paid to any person "claiming compensation for the land taken." This, according to their argument, involves the conclusion that the person who claims compensation must be a person whose land has been taken and retained, as otherwise there would be no claim for land taken and no compensation to be assessed. Their Lordships are unable to accept this interpretation of the statute.

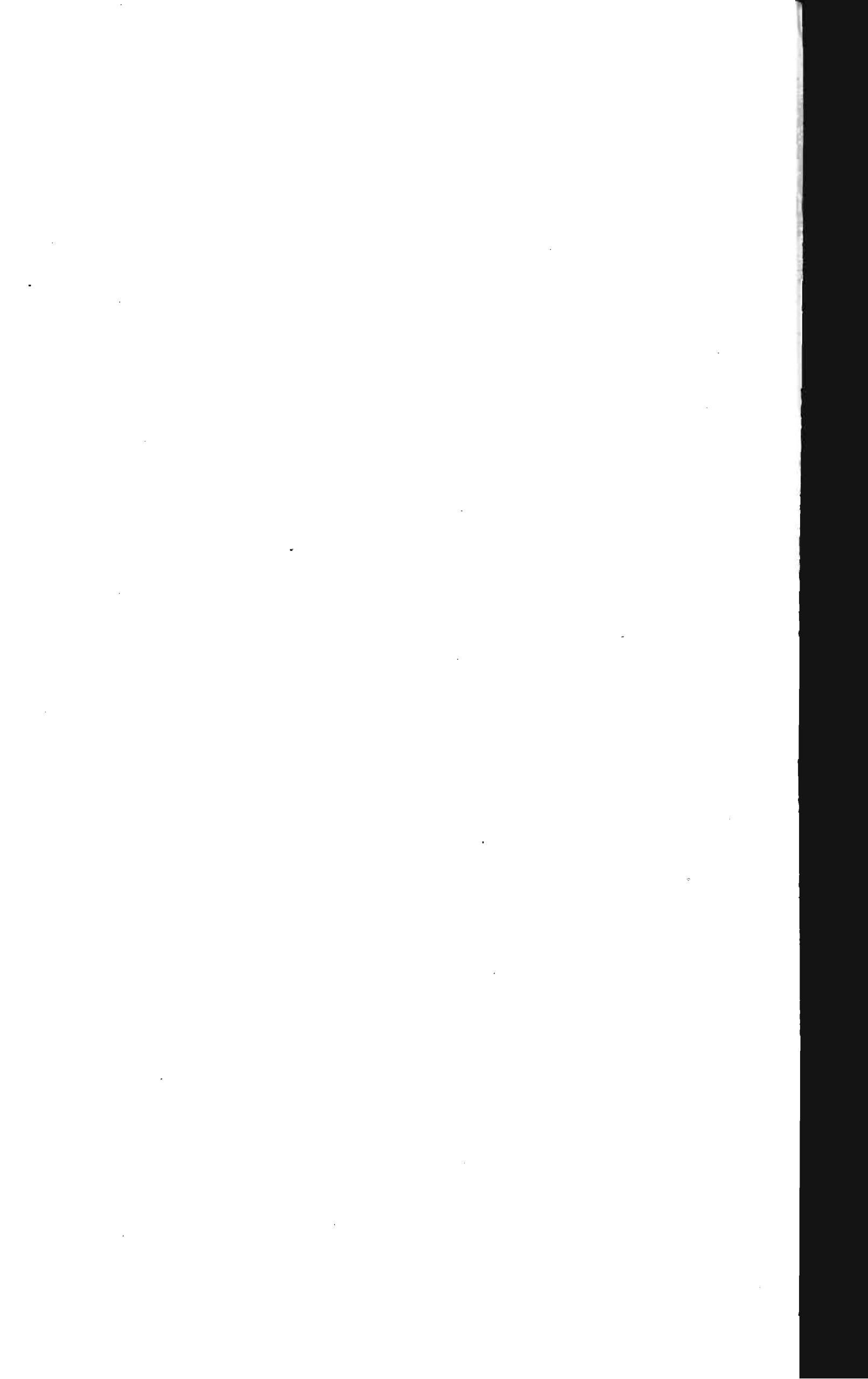
The claim for compensation arises on the original expropriation of the land. Nor is this claim defeated by the subsequent proceeding. Even after reversion, the claim for compensation still remains open for adjustment, for it has nowhere been taken away or satisfied, and in its settlement the effect of the reversion is an element to be considered.

Their Lordships are therefore unable to accept the view that the true measure of the appellants' right is something in the nature of a claim for damages for disturbing or injuriously affecting. In fact, so far as the particular piece of land is concerned, the Crown does not appear to have done any act upon the land itself that would either damage or injuriously affect its value. Its advisers have been enabled by virtue of the section to change their mind and give back the property which they originally took, and it is this fact which must be considered with other circumstances in determining the original amount of com-

pensation which they became liable to pay. Their Lordships think therefore that the judgment of Fitzpatrick C.J. was accurate in all respects, and that this case should be remitted to the Exchequer Court to determine and assess the compensation payable upon the footing that the fact that the land has been revested shall be taken into account in connection with all the other circumstances in determining the amount to be paid.

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed, that the cross-appeal should be dismissed, and that the respondent should pay the costs, both here and in the Courts below.

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In the Privy Council.

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JAMES GIBB AND ANOTHER

vs.

THE KING,

THE KING

vs.

JAMES GIBB AND ANOTHER.

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DELIVERED BY LORD BUCKMASTER.

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