

*Privy Council Appeal No. 95 of 1933.*

Raoul Tremblay - - - - - *Appellant*

*v.*

Duke-Price Power Company, Limited - - - - - *Respondents*

FROM

THE SUPERIOR COURT OF THE PROVINCE OF QUEBEC,  
DISTRICT OF ROBERVAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 15TH JULY, 1935.

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*Present at the Hearing:*

LORD ATKIN.

LORD TOMLIN.

LORD RUSSELL OF KILLOWEN.

LORD ALNESS.

SIR SIDNEY ROWLATT.

[*Delivered by* LORD ATKIN.]

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Their Lordships do not require to hear any argument from the respondents because they have come to the conclusion that on the point on which alone special leave to appeal was given in this case the appellant fails.

The appeal is brought by the appellant, who was the owner of land adjacent to, or in the vicinity of, Lake St. John in Quebec. He had a right to compensation for the value of certain land, which the respondents, who are a Hydro-Electric Power Company, had the right to flood, by reason of powers which were given to them by statute to raise the level of the Lake and its tributaries up to a contour of 17.5 ft. above the datum line mentioned in the proceedings. The appellant possessed land, which he cultivated as a farmer, which sloped downwards towards the north until it got to a relatively low level, somewhere below the contour of 10 ft. above the datum line, and he claimed compensation for the whole of his land that had been flooded up to the 17.5 ft. contour, and for damage to land above that in respect of the diminution of the amenities of the land and the facilities for working it.

The case made by the respondents was, that they were not obliged to pay compensation for land which was lower than the 15 ft. contour, because they said, land up to that contour was, on the proper construction of the legislation under the law of Quebec, part of the Lake, which belonged to the public domain, in respect of which the appellant had got no rights.

The case came on for the award of compensation eventually before the Court in Quebec; it could have been heard by Commissioners, but the appellant preferred not to go before them and the matter went to the Court. The learned Judge who gave judgment was, unfortunately, not the learned Judge who had heard the evidence, because the learned Judge who heard the evidence had died in the meantime. Judgment was given some 18 months or so after the event, but no criticism has been directed to the decision in that respect, and it must be taken to be a judgment which was regular and valid.

Now when the case was heard before their Lordships on an application for special leave to appeal it appears to have been common ground on both sides that the learned Judge in fact decided that the only land for which the appellant was entitled to compensation was his land down to the 15 ft. contour, and that he had awarded compensation for that land. It was said he had gone on to award compensation for the whole of the land claimed by the appellant, but that, it was said, did not bind the appellant, and was wrong, and it was said the learned Judge had made a mistake. Their Lordships, at the hearing of the application, said they were not prepared to allow any question of quantum to be discussed, and they gave leave on the single point of principle as to what was the area for which compensation should be assessed. It was said that an important point was to be determined as to what in fact was the bed of the Lake, for the purposes of determining that which was public domain, and that the learned Judge had made a mistake in respect of it. Now it turns out, when one has to deal with the judgment, that that was not in fact the way in which the learned Judge dealt with the case. It is quite true he expressed his opinion that the appellant's rights ceased at the 15 ft. contour, but what he did in fact do, and the only thing which he did in the effective part of his judgment, was to deal with the whole of the appellant's claim right down to the lowest contour. He determined that the amount which the respondents had tendered and, had paid into Court was sufficient, and generously sufficient, to meet the whole of the appellant's right to compensation, assuming that he established a right to compensation for the whole of the land which he had put forward as his.

Now it appears to their Lordships that there is nothing further to be discussed. No question of quantum is to be determined. It could have been said with some effect, if the question of quantum were open, that a wrong determination as to the exact title might affect the determination with regard to the whole of the land, when you are in fact assessing compensation upon the footing that part of the land may not have been, or was not, in fact, the appellant's. That seems to their Lordships to be merely a question of quantum. When once it is ascertained that the learned Judge in fact did estimate the value of the whole of the appellant's land as

claimed, it appears to their Lordships that no question arises at all under the leave to appeal as granted. In those circumstances their Lordships must come to the conclusion that this appeal should be dismissed. It is however agreed between the parties that there is an error in the amount of compensation awarded by the judgment of the Court below. This amount should be \$8602.71, and the judgment should be corrected accordingly. Their Lordships will humbly advise His Majesty accordingly. The appellant must pay the costs of the appeal.

In the Privy Council.

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RAOUL TREMBLAY

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DUKE-PRICE POWER COMPANY,  
LIMITED.

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DELIVERED BY LORD ATKIN.

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