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HAROLD MUNRO ..... APPELLANT;

AND

NATIONAL CAPITAL COMMISSION .... RESPONDENT.

1966

\*May 2, 3, 4  
June 28

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Constitutional law—Expropriation of land for Green Belt in National Capital area—Whether Parliament has legislative authority to do so—National Capital Act, 1958 (Can.), c. 37, s. 13(1)—B.N.A. Act, 1867-1960, ss. 91, 92.*

The National Capital Commission, with the approval of the Governor in Council, and acting under s. 13(1) of the *National Capital Act*, 1958 (Can.), c. 37, expropriated a farm in the township of Gloucester in the province of Ontario owned by the appellant. It was conceded that the appellant's lands were taken for the purpose of establishing the Green Belt proposed in the Master Plan (Greber) for the development of the National Capital Region. On an application before the Exchequer Court for a special case, it was directed that the following question be tried before the trial of the other questions raised in the action:

“Whether, on the special case stated by the parties, the expropriation of the lands of the defendant by the National Capital Commission therein referred to is a nullity because the legislative authority of the Parliament of Canada under the *British North America Act*, 1867 to 1960, does not extend to authorizing the expropriation.”

The trial judge answered the question in the negative. The defendant appealed to this Court. Leave to intervene in this appeal was granted to the Attorney General for Ontario and the Attorney General for Quebec, but the former subsequently withdrew his intervention.

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\* PRESENT: Taschereau C.J. and Cartwright, Fauteux, Abbott, Martland, Judson, Ritchie, Hall and Spence JJ.

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*Held*: The appeal should be dismissed.

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The subject matter of the *National Capital Act* is the establishment of a region consisting of the seat of the Government of Canada and the defined surrounding area which are formed into a unit to be known as the National Capital Region which is to be developed, conserved and improved "in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance". That subject matter is not referred to in either s. 91 or s. 92 of the *British North America Act*. Consequently, the sole power rests with Parliament under the preliminary words of s. 91, relative to "laws for the peace, order and good government of Canada". It was therefore within the powers of Parliament to authorize the Commission, for the attainment of its objects and purposes as defined in the Act, to make the expropriation of the lands of the appellant.

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*Droit constitutionnel—Expropriation d'une terre en vue d'une ceinture de verdure dans la région de la Capitale nationale—Le Parlement a-t-il l'autorité législative d'exproprier ainsi—Loi sur la Capitale nationale, 1958 (Can.), c. 37, art. 13(1)—Acte de l'Amérique du Nord britannique, 1867-1960, arts. 91, 92.*

La Commission de la Capitale nationale, avec l'approbation du gouverneur-en-conseil, et agissant en vertu de l'art. 13(1) de la *Loi sur la Capitale nationale*, 1958 (Can.), c. 37, a exproprié une ferme appartenant à l'appelant, dans le canton de Gloucester, province d'Ontario. Il est admis que la terre de l'appelant a été expropriée pour les fins d'établir la ceinture de verdure proposée dans le Plan Maître (Gréber) pour le développement de la région de la Capitale nationale. Advenant une requête devant la Cour de l'Échiquier pour établir un dossier spécial, il fut ordonné que la question suivante soit déterminée avant le procès sur les autres questions soulevées dans la contestation:

«A savoir si, sur un dossier spécial soumis par les parties, l'expropriation des terres du défendeur par la Commission de la Capitale nationale est une nullité parce que l'autorité législative du Parlement du Canada en vertu de l'*Acte de l'Amérique du Nord britannique*, 1867-1960, ne comprend pas l'autorité de procéder à cette expropriation.»

Le juge au procès a répondu négativement à la question. Le défendeur en a appelé devant cette Cour. La permission d'intervenir dans cet appel a été accordée au procureur général de l'Ontario et au procureur général du Québec, mais le premier a subséquemment retiré son intervention.

*Arrêt*: L'appel doit être rejeté.

La matière de la *Loi sur la Capitale nationale* est l'établissement d'une région comprenant le siège du gouvernement du Canada et les alentours qui sont formés en un tout connu du nom de la région de la Capitale nationale qui doit être développée, conservée et embellie «afin que la nature et le caractère du siège du gouvernement du Canada puissent être en harmonie avec son importance nationale». Cette matière n'est mentionnée ni dans l'art. 91 ni dans l'art. 92 de l'*Acte de l'Amérique du Nord britannique*. En conséquence, l'unique pouvoir appartient

au Parlement en vertu du paragraphe introductif de l'art. 91, relativement aux «lois pour la paix, l'ordre et le bon gouvernement du Canada». Il était donc de la compétence du Parlement d'autoriser la Commission, en vue d'atteindre ses buts et objets tels que définis dans le statut, d'exproprier la terre de l'appellant.

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APPEL d'un jugement du Juge Gibson de la Cour de l'Échiquier du Canada<sup>1</sup>. Appel rejeté.

APPEAL from a judgment of Gibson J. of the Exchequer Court of Canada<sup>1</sup>. Appeal dismissed.

*B. J. MacKinnon, Q.C., and Roydon Hughes, Q.C., for the appellant.*

*D. S. Maxwell, Q.C., and G. W. Ainslie, for the respondent.*

*Gérald LeDain, Q.C., for the intervenant, Attorney General for Quebec.*

The judgment of the Court was delivered by

CARTWRIGHT J.:—This is an appeal from a judgment of Gibson J. in the Exchequer Court<sup>1</sup> pronounced on April 28, 1965, answering in the negative the following question which, by order of the President of the Court, had been directed to be tried before the trial of the other questions raised in the action:

Whether, on the special case stated by the parties, the expropriation of the lands of the defendant by the National Capital Commission therein referred to is a nullity because the legislative authority of the Parliament of Canada under the *British North America Act, 1867* to 1960, does not extend to authorizing the expropriation.

On June 25, 1959, the respondent, with the approval of the Governor in Council, expropriated a farm of 195 acres in the Township of Gloucester in the Province of Ontario owned by the appellant. In so doing the respondent was acting under subs. (1) of s. 13 of the *National Capital Act*, Statutes of Canada 1958, 7 Elizabeth II, Chap. 37, herein-after sometimes referred to as "the Act", which came into force on February 6, 1959.

<sup>1</sup> [1965] 2 Ex. C.R. 579.

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By information filed in the Exchequer Court on January 31, 1963, the respondent recited the taking of the lands for the purposes of the Act and stated its willingness to pay \$200,000 by way of compensation.

In his statement of defence filed on October 13, 1964, the appellant asked, firstly, a declaration that the expropriation "was illegal, null and void because it was beyond the jurisdiction of the Parliament of Canada to grant to the Plaintiff (the respondent) powers of expropriation for establishing a Green Belt outside the limits of the said City of Ottawa", secondly, in the alternative, that compensation be awarded to him in the sum of \$420,000.

By order of the Chief Justice of Canada it was directed that notice of the constitutional question raised in this appeal should be served on the Attorneys General of the Provinces and on the Clerks of the City of Ottawa, the City of Hull, the Township of Nepean and the Township of Gloucester and a date was fixed for the making of applications for leave to intervene.

By order of Judson J. made on September 9, 1965, leave to intervene was granted to the Attorney General for Ontario and the Attorney General for Quebec. Subsequently the Attorney General for Ontario withdrew his intervention. Counsel for the Attorney General for Quebec filed a factum and presented a full and helpful argument in support of the appeal. It will be observed that the question which Gibson J. was called upon to decide is limited to whether the expropriation of the appellant's land is a nullity for a single specified reason:

because the legislative authority of the Parliament of Canada under the *British North America Act*, 1867 to 1960, does not extend to authorizing the expropriation.

The main ground relied on by counsel who support the appeal is that the power of expropriation which the Act gives to the respondent has been exercised, in the case of the appellant's land, for the imposition upon the use of land within the National Capital Region of controls or restrictions of the nature of zoning regulations contemplated by the Planning Acts passed by the Provinces. It is said, more particularly, that the power has been used for the purpose of the establishment of a "Green Belt" in the

Region. It is argued that such a use of the power of expropriation is in its nature, character and purpose a use in relation to a matter falling within the classes of subjects assigned exclusively to the Legislatures of the Provinces by the *British North America Act* and that, consequently, if the *National Capital Act* purports to confer such a power upon the Commission it is, *pro tanto*, *ultra vires* of Parliament.

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It is conceded by counsel for the respondent, and so stated in their factum, that the appellant's lands were taken for the purpose of establishing the Green Belt proposed in the Master Plan for the development of the National Capital Region. The constitutional question to be determined is whether it is within the powers of Parliament to authorize the establishment of a Green Belt within the National Capital Region.

The learned trial judge has made a careful review of the legislative history of the *National Capital Act* and of the *Planning Act*, R.S.O. 1960, c. 296, and of the development of the Master Plan for the Region. I do not find it necessary to repeat this review because I propose, for the purposes of this appeal, to accept the following conclusions that counsel for the appellant and for the intervenant seek to draw, in part, from that history: (i) that the making of zoning regulations and the imposition of controls of the use of land situate in any province of the sort provided, for example, in the *Planning Act* (Ontario) are matters which, generally speaking, come within the classes of subjects assigned to the Legislatures by s. 92 of the *British North America Act*; (ii) that the legislative history of the predecessors of the *National Capital Act* indicates that Parliament, up to the time of the passing of that Act, contemplated that the "zoning" of the lands comprised in the National Capital Region should be effected by co-operation between the Commission established by Parliament and the municipalities which derive their powers from the Provincial Legislatures; and (iii) that it was only after prolonged and unsuccessful efforts to achieve the desired result by such co-operation that Parliament decided to confer upon the National Capital Commission the powers necessary to enable it to carry out the zoning contemplated in the Master Plan.

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It is first necessary to consider what is the matter in relation to which the *National Capital Act* was passed and this requires an examination of its terms.

Its full title is "an Act respecting the Development and Improvement of the National Capital Region".

It establishes a "National Capital Region", described in the Schedule to the Act, comprising approximately 1,800 square miles, including and surrounding the City of Ottawa, situate partly in the Province of Ontario and partly in the Province of Quebec. This region is defined as "the seat of the Government of Canada and its surrounding area". It includes the lands of the appellant in the Township of Gloucester.

By s. 3 of the Act, the respondent is created as a corporation to be called the "National Capital Commission" and by s. 27 it and the Federal District Commission are declared for all purposes to be one and the same corporation. By s. 4(1) it is declared that the Commission is for all purposes of the Act an agent of Her Majesty and that its powers under the Act may be exercised only as an agent of Her Majesty.

Section 10 defines the objects and purposes of the Commission and confers the powers to be used for the purposes of the Act. It reads as follows:

10.(1) The objects and purposes of the Commission are to prepare plans for and assist in the development, conservation and improvement of the National Capital Region in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance.

(2) The Commission may for the purposes of this Act,

- (a) acquire, hold, administer or develop property;
- (b) sell, grant, convey, lease or otherwise dispose of or make available to any person any property, subject to such conditions and limitations as it considers necessary or desirable;
- (c) construct, maintain and operate parks, squares, highways, parkways, bridges, buildings and any other works;
- (d) maintain and improve any property of the Commission, or any other property under the control and management of a department, at the request of the authority or Minister in charge thereof;
- (e) co-operate or engage in joint projects with, or make grants to, local municipalities or other authorities for the improvement, development or maintenance of property;

- (f) construct, maintain and operate, or grant concessions for the operation of, places of entertainment, amusement, recreation, refreshment, or other places of public interest or accommodation upon any property of the Commission;
- (g) administer, preserve and maintain any historic place or historic museum;
- (h) conduct investigations and researches in connection with the planning of the National Capital Region; and
- (i) generally, do and authorize such things as are incidental or conducive to the attainment of the objects and purposes of the Commission and the exercise of its powers.

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Section 13(1) reads as follows:

13.(1) The Commission may, with the approval of the Governor in Council, take or acquire lands for the purpose of this Act without the consent of the owner, and, except as otherwise provided in this section, all the provisions of the *Expropriation Act*, with such modifications as circumstances require, are applicable to and in respect of the exercise of the powers conferred by this section and the lands so taken or acquired.

Subsection (3) of this section provides that all claims for compensation for lands taken under the section may be heard and determined in the Exchequer Court of Canada.

By section 18, it is provided that the Commission may make by-laws for the conduct and management of its activities and for carrying out the purposes and provisions of the Act.

In my view, it is clear, from a reading of the Act as a whole, that the matter in relation to which it is enacted is the establishment of a region consisting of the seat of the Government of Canada and the defined surrounding area which are formed into a unit to be known as the National Capital Region which is to be developed, conserved and improved "in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance".

The next question is whether this subject matter comes within any of the classes of subjects which, by s. 92 of the *British North America Act*, are assigned exclusively to the Legislatures of the Provinces.

The only reference to the National Capital of Canada contained in the *British North America Act* is in s. 16, which reads as follows:

16. Until the Queen otherwise directs, the Seat of Government of Canada shall be Ottawa.

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The authority reserved by this section to the Queen to change the location of the Seat of Government of Canada would now be exercisable by Her Majesty in the right of Canada and, while the section contemplates executive action, the change could, doubtless, be made by Act of Parliament in which Her Majesty acts with the advice and consent of the Senate and House of Commons of Canada.

The subject matter of the *National Capital Act*, as I have sought to define it above, is not referred to in either s. 91 or s. 92 of the *British North America Act*. In *Attorney-General for Alberta v. Attorney-General for Canada*,<sup>1</sup> Viscount Maugham said at p. 371:

It must not be forgotten that where the subject matter of any legislation is not within any of the enumerated heads either of s. 91 or of s. 92, the sole power rests with the Dominion under the preliminary words of s. 91, relative to "laws for the peace, order, and good government of Canada".

In *In re Regulation and Control of Radio Communication in Canada*<sup>2</sup>, Viscount Dunedin had made a similar observation at p. 312:

Being, therefore, not mentioned explicitly in either s. 91 or s. 92, such legislation falls within the general words at the opening of s. 91 which assign to the Government of the Dominion the power to make laws "for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the Provinces".

In *Johannesson v. Rural Municipality of West St. Paul*<sup>3</sup>, in which it was held that the subject of aeronautics is within the exclusive jurisdiction of Parliament, this Court (at pages 308, 311, 318 and 328) adopted as the true test, to be applied in determining whether a subject matter falls within the legislative authority of Parliament under the general words at the opening of s. 91, that formulated by Viscount Simon in the *Canada Temperance Federations*<sup>4</sup> case, in the following words:

In their Lordships' opinion, the true test must be found in the real subject matter of the legislation: if it is such that it goes beyond local or provincial concern or interests and must from its inherent nature be the concern of the Dominion as a whole (as, for example, in the *Aeronautics*

<sup>1</sup> [1943] A.C. 356, 1 W.W.R. 378, 1 All E.R. 240, 2 D.L.R.I.

<sup>2</sup> [1932] A.C. 304, 1 W.W.R. 563.

<sup>3</sup> [1952] 1 S.C.R. 292, [1951] 4 D.L.R. 609.

<sup>4</sup> [1946] A.C. 193 at 205, 2 W.W.R. 1, 85 C.C.C. 225, 1 C.R. 229, 2 D.L.R. 1.



case and the *Radio* case), then it will fall within the competence of the Dominion Parliament as a matter affecting the peace, order and good government of Canada, though it may in another aspect touch on matters specially reserved to the provincial legislatures.

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I find it difficult to suggest a subject matter of legislation which more clearly goes beyond local or provincial interests and is the concern of Canada as a whole than the development, conservation and improvement of the National Capital Region in accordance with a coherent plan in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance. Adopting the words of the learned trial judge, it is my view that the Act "deals with a single matter of national concern".

There is no doubt that the exercise of the powers conferred upon the Commission by the *National Capital Act* will affect the civil rights of residents in those parts of the two provinces which make up the National Capital Region. In the case at bar the rights of the appellant are affected. But once it has been determined that the matter in relation to which the Act is passed is one which falls within the power of Parliament it is no objection to its validity that its operation will affect civil rights in the provinces. As Viscount Simon, adopting what had been pointed out by Rand J., said in *Attorney-General for Saskatchewan v. Attorney-General for Canada*<sup>1</sup>:

Consequential effects are not the same thing as legislative subject matter. It is "the true nature and character of the legislation"—not its ultimate economic results—that matters.

The passage from the judgment of Duff J., as he then was, in *Gold Seal Limited v. Dominion Express Company and Attorney-General for Alberta*<sup>2</sup>, quoted by the learned trial judge, correctly states the law. It is as follows:

The fallacy lies in failing to distinguish between legislation affecting civil rights and legislation "in relation to" civil rights. Most legislation of a repressive character does incidentally or consequentially affect civil rights. But if in its true character it is not legislation "in relation to" the subject matter of "property and civil rights" within the provinces, within the meaning of section 92 of the British North America Act, then that is no objection although it be passed in exercise of the residuary authority conferred by the introductory clause.

<sup>1</sup> [1949] A.C. 110 at 123, 1 W.W.R. 742, 2 D.L.R. 145.

<sup>2</sup> (1921), 62 S.C.R. 424 at 460, 3 W.W.R. 710, 62 D.L.R. 62

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I have already indicated my view that the matter in relation to which the *National Capital Act* was passed does not come within any of the classes of subjects enumerated in s. 92.

It has been said repeatedly that, in dealing with questions that arise under the *British North America Act* as to the allocation of law-making powers between Parliament and the Legislatures of the Provinces, the court will be well advised to confine itself to the precise question raised in the proceeding which is before it. It is sufficient in this case to say that in my opinion it is within the powers of Parliament to authorize the Commission, for the attainment of its objects and purposes as defined in the Act, to make the expropriation of the lands of the appellant referred to in the question submitted to the Exchequer Court. It follows from this that I agree with the conclusion of the learned trial judge that the question submitted to him should be answered in the negative.

For these reasons I would dismiss the appeal with costs.

*Appeal dismissed with costs.*

*Solicitors for the appellant: Hughes, Laishley, Mullen & Touhey, Ottawa.*

*Solicitor for the respondent: E. A. Driedger, Ottawa.*

*Solicitor for the intervenant: G. LeDain, Montreal.*