

1929
*Nov. 13.

HIS MAJESTY THE KING (RESPOND- } APPELLANT;
ENT)

AND

ADAM B. MACKAY, ET AL. (CLAIMANTS) . . RESPONDENTS.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Interest—Disallowance of, in fixing compensation for ship requisitioned by Crown under War Measures Act, 1914 (D.)—Governing principles as to allowance of interest.

The Crown, in April, 1918, pursuant to Order in Council passed under the *War Measures Act, 1914*, requisitioned the respondents' ship. The Exchequer Court of Canada ([1928] Ex. C.R., 149) fixed the compensation at \$11,000 (as being the ship's value at time of requisition)

*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret and Lamont JJ.
(1) [1924] S.C.R. 35, at p. 41; (2) [1928] S.C.R. 264, at p. 273.
[1925] A.C. 344.

with interest thereon from date of requisition to date of judgment. The Crown appealed against the allowance of interest.

Held: The allowance for interest should be set aside. The right to interest does not depend on the income earning capacity of the property requisitioned. Where interest is allowed, it is on the ground of express or implied contract or by virtue of a statute; and no such ground existed here (the case was distinguishable from those where interest is allowed on value of land expropriated). Interest was really asked for here as damages for detention of the compensation money pending the ascertainment of what was due; and as such it could not be recovered.

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APPEAL from the judgment of the Exchequer Court of Canada (Audette J.) (1), upon a reference under s. 7 of the *War Measures Act, 1914* (Dom.), fixing the compensation to be paid by the Crown for the requisition of the respondents' steamship *Sarnor*; which requisition was made by the Canadian Government on April 25, 1918, pursuant to an Order in Council passed by virtue of the said Act. The judgment appealed from fixed the compensation at \$11,000 (as being the value of the ship at the time of requisition) with interest thereon, at the rate of 5% per annum, from April 25, 1918 (the date of requisition) to the date of judgment.

The appeal to the Supreme Court of Canada was limited to the question of said allowance of interest, the Crown contending that interest was not allowable.

O. M. Biggar, K.C., for the appellant, submitted that the question was concluded in appellant's favour by *Canadian Drug Co. v. Board of the Lieutenant-Governor in Council* (2) and *Swift & Co. v. Board of Trade* (3).

W. F. Chipman, K.C., and *Christopher C. Robinson, K.C.*, for the respondents, submitted that the question was whether there was anything to prevent the court from awarding interest as part of the compensation; that the principle which was applied to cases of expropriation of land (as to which see *Inglewood Pulp & Paper Co. v. New Brunswick Electric Power Commission* (4), and *Seaboard Air Line Ry. Co. v. United States* (5)) is applicable also to a ship; and that the case of goods (as in *Swift & Co. v. Board of Trade* (6)), where the only ground for claiming interest is that the claimant has been kept out of his

(1) [1928] Ex. C.R. 149.

(2) [1925] S.C.R. 23, at p. 39.

(3) [1925] A.C. 520. See especially pp. 532, 544, 548.

(4) [1928] A.C. 492.

(5) (1923) 261 U.S. 299.

(6) [1925] A.C. 520.

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money, is not analogous; a ship, like land, is income earning property; the expropriator is both in possession of the ship and in receipt of the earnings, and the former owner is deprived of both; the reasons for awarding interest in the case of land exist equally in the case of a ship, and, since there is no statutory provision to prevent it, the same rule should be applied.

Newcombe J., in the course of the argument, referred to *Maine & New Brunswick Electrical Power Co. Ltd. v. Hart* (1).

Upon the conclusion of the argument, the judgment of the Court was delivered orally by

ANGLIN C.J.C.—We are all of the opinion that the appeal must succeed. The allowance for interest will be set aside. Otherwise, of course, the judgment below stands, there being no appeal as to the principal sum.

The right to interest does not depend on the income earning capacity of the property requisitioned. Where interest is allowed, it is on the ground of contract, express or implied, or by virtue of a statute. It is allowed on the purchase money of land which is the subject of a sale; or on the value of land which is the subject of expropriation under certain statutes—but that is upon the ground of implied contract which is deemed to arise on the giving of “notice to treat.”

Here there is nothing of the kind. This is a case of appropriation of personal property. No provision is made for payment of interest. There is no case of implied contract; and the statute under which the requisition was made does not provide for interest.

Interest is really asked for here as damages for detention of the compensation money pending the ascertainment of what is due. As such, it cannot be recovered.

The appeal is allowed with costs.

Appeal allowed with costs.

Solicitor for the appellant: *O. M. Biggar.*

Solicitors for respondent MacKay: *Langs, Binkley & Morwick.*

Solicitors for Canada Steamship Lines, Limited, successors in interests to respondents, Bonham and Johnson: *Brown, Montgomery & McMichael.*