

SEQUEL TO "METES AND BOUNDS"

SUPREME COURT OF CANADA REVERSES DECISION OF EXCHEQUER COURT

*by R.F. Dore*

In January, 1960, issue of the "Surveyor" an account was given of an Exchequer Court case in which a judgment was handed down to the effect that the expropriation by the Federal Government of the lands of Mrs. Florence Crawford was invalid because the said lands had not been "laid off by metes and bounds". The question in court revolved around the interpretation of Section 9 (1) of the Expropriation Act R.S.C. 1927 C. 64, which reads as follows:-

"Land taken for the use of Her Majesty shall be laid off by metes and bounds; and when no proper deed or conveyance thereof to Her Majesty is made and executed by the person having the power to make such deed or conveyance, or when a person interested in such land is incapable of making such deed or conveyance, or when, for any other reason, the Minister deems it advisable so to do, a plan and description of such land signed by the Minister, the deputy of the Minister or the secretary of the department, or by the superintendent of the public work, or by an engineer of the department, or by a land surveyor duly licensed and sworn in and for the province in which the land is situate, shall be deposited of record in the office of the registrar of deeds for the county or registration division in which the land is situate, and such land, by such deposit, shall thereupon become and remain vested in Her Majesty."

It was given as the opinion of the court at that time that "the laying off of lands by metes and bounds means the physical act of laying off of the land on the ground and the placing of monuments or marks at the corners of the land so that it can be physically identified."

This interpretation is, of course, directly opposite to the practise that has generally been followed, in expropriation cases, which is to merely file a plan and description of the lands in the Registry or Land Titles Office; in most cases without having done any field work whatsoever. The judgment therefore had the effect of invalidating thousands of government expropriations which have been made since Confederation. Mr. Justice J. T. Thorson, President of the Exchequer Court, explained that the judgment was directly contrary to his own judicial opinion but that it would make it incumbent on the government to appeal it to the Supreme Court and thus obtain a final interpretation of the Expropriation Act. Local newspapers referred to it as the "wrong-way Corrigan judgment".

The case was appealed to the Supreme Court of Canada and their judgment was handed down on April 11, 1960, reversing the previous judgment of the Exchequer Court. This decision of the Supreme Court means, in effect, that the requirements of the Expropriation Act are legally fulfilled by the filing of a Notice of Expropriation in the appropriate Registry Office, along with a plan and description of the lands to be taken and that it is not necessary to physically mark the boundaries on the ground.

The following excerpts taken from the reasons for judgment given by the Justices of the Supreme Court may be of interest to surveyors.

"The phrase "lay off" is given the following meaning, amongst others, in the Oxford English Dictionary (1933) vol. 6, page 130:- "to mark or separate off (plots of ground etc.); to plot out land in some way or for some purpose". "

"An example given of its use is:- "They directed that the streets should be laid off obliquely". Among the meanings assigned in the Oxford Dictionary to the verb - "to plot" are: "to make a plan, map or diagram of"; "to lay down on a map"; "to make a plan of". "

"The phrase "by metes and bounds" is defined in The Dictionary of English Law, by Earl Jowitt (1959) - page 1169, as "by measurements and boundaries". In Words and Phrases, Permanent Edition, Vol. 27, the phrase "metes and bounds" is given the meanings "boundary lines or limits"; "the boundary lines of land with their terminal points and angles". "

"In my opinion on the true construction of the opening sentence of section 9 (1), read in the context of the remainder of the sub-section and of the whole act, what is required is that the lands proposed to be taken shall be laid down or marked out on a map or plan and shall also be described by metes and bounds in a written verbal description, which plan and description shall then be deposited in the office of the proper registrar of deeds. It is in my opinion immaterial whether any work is done by a surveyor on the lands or whether any visible marks are placed at the boundaries thereof. The maximum requirement of the plan and description deposited make clear exactly what land is being expropriated. It is plain that in the case at bar this requirement was fulfilled. "

"If the true meaning of the words of section 9 (1) were doubtful it would be proper to consider the apparent purpose of Parliament in enacting them as disclosed by the whole act. That purpose appears to be two-fold; (1) to permit the Crown in the cases envisaged by the Act to expropriate lands making due compensation therefor; and (2) to ensure that the lands taken are identified with certainty".

"If certainty of description of the lands taken can be achieved without the necessity of a surveyor visiting them and placing marks on their boundaries, it would require plain words to render the performance of such unnecessary acts a condition precedent to the validity of an expropriation, and I find no such words in the section. "

"There are two distinct methods of taking land required for Her Majesty; namely, (a) by the fact of the taking physical possession thereof (s. 3) and (b) by the filing of the plan and description (s. 9). If the taking is under the latter, the deposit of the plan and description signed as provided, is sufficient. "

#### THE SIXTY-NINTH ANNUAL MEETING

O. L. S. Maurice Armstrong and his Entertainment Committee received the plaudits of the exceptionally well-attended meeting for the efficiency with which all functions were handled.

In retrospect, our Past President, Mr. G. D. H. Currie, must be commended for the excellence of the papers presented by the various speakers and for the overall program. A highlight was the panel discussion on Control Surveys and the Establishment of a Directorate of Surveys. No one was left in doubt that the near future will see such an office established and horizontal control instituted. It has to come.

Any discussion of the Annual Meeting would not be complete without mention of the Luncheon Meeting, in the strikingly new Cleary Auditorium overlooking the

(continued on Page 13)