

CAN.

S. C.

ROYAL
TRUST CO.
v.
CITY OF
MONTREAL.

Fitzpatrick, C.J.

S. 418, however, provides:—

418. The city shall not be liable for any indemnity or damages claimed with respect to any building constructed, or improvements, leases or contracts made by any person whatever, upon any land or property, after the confirmation of any plan or map, or of any modification or alteration of, or addition thereto.

The question is what is the effect of s. 418? Cross, J., in his reasons for the judgment appealed from, says:—

The respondent (now appellant) is in error in its pretension that it should have been awarded what would have been the real value of the land in question if it had been marketable land. It is said for the respondent (appellant) that the city is not to be permitted to depreciate land by putting it on a plan and then take the land at the depreciated value made so by its own act. To that it can be said that the city plan is given certain effect by statute. That effect causes depreciation but it is the law.

I must dissent altogether from this interpretation of s. 418.

It is a well-recognised canon of construction not to interpret an Act of the legislature in such a way as to take away property without compensation, unless such intention is clearly expressed or is to be inferred by plain implication.

In the recent case in the English Court of Appeal of *Cannon Brewery Co. v. Central Control Board (Liquor traffic)* reported in [1918] 2 Ch. 101, the Master of the Rolls in his judgment said at p. 120:—

No intention can be attributed to parliament of taking away from individuals their property without paying them for it; unless such intention be expressed in clear and unequivocal language.

(*Gibb v. The King* 42 D.L.R. 336, [1918] A.C. 915, 27 D.L.R. 262, 52 Can. S.C.R. 402) also.

Now I can see nothing in s. 418 to warrant the view that it is intended to have the effect of a partial and indeed almost total confiscation of the property of an owner of land. The intention of the legislature, I think, was this: Where a city improvement is proposed, the carrying out of which may necessarily take some time, parties whose land will need to be expropriated for the purpose are not to be allowed to aggravate the indemnity which they will be entitled to claim by carrying out improvements in the interval.

This does not seem to me to involve any intention on the part of the legislature to deprive the landowner of the full value of his land which he is entitled to be paid.

The power given to the city is a very exceptional one and one that, no doubt, may easily lead to considerable hardship. Under