
Province of Ontario.

HIGH COURT OF JUSTICE.

Falconbridge. C.J.K.B.—Trial.]

[Dec. 30, 1909.

FELKER v. McGUIGAN CONSTRUCTION CO.

Expropriation of easements—Hydro-Electric Commission—Public Works Act—Trespass—Confiscation—Compensation.

The defendants were contractors with the Hydro-Electric Power Commission of Ontario for the building of a line from Niagara Falls to transmit electricity to various municipalities. The line was to be carried on towers placed on private property or highways along the route, without any provision for right of way or protection of any kind; the intention being to use as an easement only such portion of the land as would be necessary to give a footing for the towers. The plaintiff objected to the placing of towers on her land on the ground that the mode of construction and operation of the line was a serious menace to life and property, and obtained an interim injunction to restrain the defendants from entering upon her land for the purpose of erecting towers. It was claimed by the plaintiff that the Hydro-Electric Power Commission and its contractors had no right to expropriate easements and compel owners of land to arbitrate on the supposition that the Public Works Act, which has a provision for compensation, was applicable. Sec. 9 of 7 Edw. VII. c. 19 provides that under certain circumstances the Commission shall have the right to proceed in the manner provided by the Public Works Act where the Minister of Public Works takes land and property for the use of the province. Sec. 10 of 9 Edw. VII. c. 19 provides that "in addition to all other powers, the Commission may, by purchase or otherwise, or without the consent of the owners thereof or persons interested therein, acquire, enter upon and take possession of and use a right or easement to construct, erect, maintain and operate transmission lines." Notices of expropriation had been served by the Commission claiming the right to take possession and to arbitrate which notices it was contended were delusive and not warranted, having no statutory authority.

Held, 1. As the jurisdiction of the provincial legislature having been held to be supreme within its own jurisdiction, it is clear that if it chooses "to confiscate the farm of the plaintiff without