

HODGINS, J.A.:—It was urged that the Judge giving the direction for service under sec. 21 of ch. 143, R.S.C., is the one intended by the statute to deal with the issue of the warrant thereunder; consequently, I dispose of this motion.

Counsel for the respondent contended that the Crown had, subsequently to the notice of expropriation, become owner of the lands of which the respondent was and is tenant, and had received rent from him, and was, therefore, estopped from proceeding further with the expropriation of his leasehold interest. I am unable to see how the Crown has disabled itself from taking the leasehold by acquiring the fee of the lands and entering into the receipt of the profits thereof. It is expropriating the leasehold interest, whether it or the former landlord is entitled to receive the rent until possession is given up.

It is all in the respondent's interest that he should remain undisturbed as long as possible. But, if the receipt of rent implied a waiver of any prior proceedings to get possession, then it can be, and is, in these proceedings, satisfactorily explained. See *McMullen v. Vanatto*, 24 O.R. 625, and per *Morrison, J.*, in *Manning v. Dever*, 35 U.C.R. 294 (the latter case cited by Mr. Proudfoot).

I do not say that the Crown can be bound by waiver, but I deal with the application as argued.

Negotiations have gone on since possession was demanded many months ago; the parties cannot agree, and the matter must be settled by arbitration. Meantime, possession is required immediately, as sworn to on behalf of the Department affected.

I think the warrant must issue; but I exercise any discretion I have by delaying its execution for a month, on the condition that the tenant repay now the rent refunded, and pay from the date of his last payment, until the expiration of the month of respite, rent at the rate reserved in his lease. This will enable him to look around for a place to which his business may be transferred. If he can agree on the compensation, it can be paid to him. If not, I do not see that I can fix it, or order it to be paid into Court. See sec. 8, sub-secs. 2 and 3, secs. 22, 26, 28.

The costs will be reserved to be dealt with under sec. 32.