

Petition of right against the Crown in right of the Province of Ontario.

The suppliant company claimed to be the owner in fee of certain parts of lots in the township of York fronting on the Humber river, being parts of a tract of land granted by the Crown to William Lawrence by deed of the 1st September, 1797, containing 228 acres. The company alleged that the river, at the date of the grant aforesaid and thereafter, was, and now was, a non-navigable river; that in 1878, by reason of an exceptional storm and flood, the river suddenly shifted its course, and thereafter flowed and now flowed in a channel northerly and easterly of the channel in which it flowed at the date of the grant and up to 1878; that for 60 years before the date of the petition the suppliant company and its predecessors in title "enjoyed free, open, and uninterrupted possession" of the parts of the lots in question; and that the Crown, in right of the Province of Ontario, on the 25th July, 1919, agreed to grant these lands to the Corporation of the City of Toronto, and thereby wrongfully assumed the ownership and possession thereof.

The prayer of the petition was that it might be declared that these lands passed to Lawrence by the grant of 1797; that the suppliant company was the owner thereof, and entitled to a confirmatory grant thereof from the Crown; and for restitution and costs.

The petition was tried without a jury at a Toronto sittings.

J. W. Bain, K.C., M. L. Gordon, and B. H. L. Symmes, for the suppliant company.

Irving S. Fairty and V. Foley, for the Crown.

LENNOX, J., in a written judgment, reviewed the evidence in detail and found the facts against the contention of the Crown. W. S. Gibson's survey (1911) coincided with P. S. Gibson's work in 1889. It should be declared that W. S. Gibson's plan (exhibit 18) truly delineated the original course of the river, and that the western boundary of the land of the suppliant company, as against the Crown, was shewn on the dotted red line on that plan.

There should be judgment accordingly with costs.