

BETWEEN

THE KING, ON THE INFORMATION OF  
 THE ATTORNEY-GENERAL OF CAN- } PLAINTIFF;  
 ADA..... }

1920  
 Sept. 23.

AND

ELIZA MURRAY (WIDOW) AND  
 AGATHA HATT, MARRIED WOMAN, } DEFENDANTS.  
 WIFE OF EARL HATT, AND EARL  
 HATT..... }

*Expropriation—Value of farm for subdivision purposes—Market value—Probabilities of sale in village lots.*

*Held.* The value of a farm for subdivision must be tested by the law of supply and demand; and where it does not appear that even had the property been subdivided, and on the market at the date of expropriation, it could have been all sold in lots within a reasonable time; and, moreover, where there is a large amount of property in the neighbourhood available for subdivision and more suitable than the property expropriated, the court will value the property on the basis of farm land and not as village or town lots, notwithstanding that industrial enterprises in the vicinity had developed the locality.

**INFORMATION** exhibited by His Majesty's Attorney-General for Canada for the expropriation of property of the defendants for use as a Seaplane Station at Eastern Passage, Portsmouth, Nova Scotia.

The case was tried at Halifax, on the 22nd, 23rd, and 24th days of July, 1920.

*R. H. Murray, K.C.*, counsel for plaintiff;

*R. T. MacIbreith, K.C.* and *C. Tremaine*, counsel for defendants.

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The facts of the case are stated in the reasons for judgment.

AUDETTE J., this 23rd September, 1920, delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that certain lands, belonging to the defendants, were taken and expropriated by the Crown, under the provisions of the Expropriation Act, for the use, construction and maintenance of a Seaplane Station at Eastern Passage, on the Dartmouth side of Halifax Harbour, N.S., by depositing, on the 19th August, 1918, and the 6th November, 1918, respectively, plans and descriptions of such lands, in the office of the Registrar of Deeds for the county of Halifax, N.S.

The area taken is (19·31) nineteen and thirty-one hundredths acres for which, it is admitted, the Crown tendered, on the 29th August, 1918, the sum of \$13,660 for the lot first described in the information, and the sum of \$2,700 for the second lot, on the 14th January, 1919. Both tenders were refused. The expropriation takes the best and most valuable part of the farm upon which the buildings were erected.

The defendants by their plea, claim that the sum of \$16,360 is insufficient and ask a larger and further compensation and relief.

Accompanied by counsel for both parties, I have had the advantage of viewing the *locus in quo* which is situate at about four miles from Dartmouth.

At the date of the expropriation the property in question was used and worked exclusively for farming purposes,—it was a farm in the full acceptation of the term. True, there had been at that time some few applications for building lots to be carved therefrom,

and the owners, as part of their policy, had refused to sell finding it undesirable to interfere with the property as a whole; but, at that date, no building lots therefrom had been sold. Subsequently, as appears by the evidence, a few were sold.

As a farm, it was nothing but a very ordinary farm,—below the average of what may be termed good farms. The soil, upon the part fit for cultivation, is very ordinary, and a great part of the farm to the east is rocky and covered with bushes and trees.

The compensation is to be based upon the value to the owners of land at the date of the expropriation, taking into account all its prospective potentialities, but only the existing value of such advantages at the date of the expropriation (1).

The value of the farm for subdivision purposes must be tested by the law of supply and demand. It does not appear from the evidence that if the property had been subdivided and in the market at that date, that it could have been all sold in lots within a reasonable time. The oil works at Imperoyal have developed that locality, but there is any amount of property in that neighbourhood available for subdivision, that would be taken in preference to the lands in question.

There were options of \$80,000 for the whole, and \$50,000 for half of the farm, given upon this property,—one of them, however, was of a very uncertain character—but such options never matured, and are very much of a speculative character. Some extravagant amounts would be arrived at, if the testimony of some of the witnesses for the owners were given heed to; but they are based upon public talk, especially among promoters, in the locality, built upon the comparative prices which were obtained from subdivisions in other

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(1) *Trudel v. The King*, 49 S.C.R. 501, and cases therein cited.

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localities. That is not of much assistance when it is sought to find the market price of this property at the date of the expropriation, especially when the demand for lots there must be admitted to be very small.

As expressed by Anglin J. in the *Trudel* case (*ubi supra*), p. 514: "Of anything which a farseeing purchaser would take into account in estimating what he should pay for the property, \* \* \* \* the owners are entitled to the benefit in fixing the value of the land for purposes of expropriation."

And indeed, when we consider the amount tendered and offered by the Crown, we must come to the conclusion that such consideration and basis have been weighed and accepted before arriving at the sum of \$16,360, because that amount is far beyond the value of the property as a farm.

Viewed as a farm, with the advantage of the potentiality of being turned into subdivisions within a fairly reasonable time, the buildings, with very few exceptions, can only have a demolition value and not the value established by some of the witnesses on the basis, as to what it would cost in our days to build them anew. The dwelling house appears to have been built over 60 years ago.

At the date of the expropriation, it could not fairly be expected that this property could be all sold within a reasonable time as building lots. Sales would be very slow, and spread over a very long period, if ever they were all sold. There was no market for such a large subdivision in such locality at the date of the expropriation.

The tender and offer made by the Crown, which appears to be very reasonable under the circum-

stances, is based, as appears from the evidence, upon the valuation of Crown witness Morrison,—but as this witness has, apparently, left out some items for which the owners should receive compensation, and upon which the witness when at trial placed additional value, I have come to the conclusion that if \$2,000 be added to the tender, as representing compensation for severance, the water-lot, fence, second well, etc., etc., in fact covering all other legal element of compensation,—that a very fair and just award will be arrived at.

Eliza Murray, one of the defendants, is vested with only a life interest in the property, and it is admitted by both parties, that she was born on the 11th October, 1864,—she being of the age of 54 at the date of the expropriation,—her life-interest is assessed, according to the tables found in Cameron on Dower, at 55·89 per cent of the award, and Agatha Hatt at 44·11 per cent for the reversion.

Therefore, there will be judgment as follows: 1st, the lands expropriated herein, are declared vested in the Crown as of the date of the expropriation; 2nd, the compensation for the lands taken and for all damages resulting from the expropriation, is hereby fixed at the total sum of \$18,360, with interest on the sum of \$15,660 from the 19th August, 1918, to the date hereof, and on \$2,700 from the 6th November, 1918, to the same date; 3rd, the defendants are entitled to recover from the plaintiff the said sum of \$18,360 in the following proportion, viz.: Eliza Murray,—for her life-interest, 55·89%, equal to \$10,261.40, and Agatha Hatt, the reversion representing 44·11% equal to \$8,098.60—with interest as above mentioned—upon their giving to the Crown a good and sufficient

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title free from all mortgages or incumbrances whatsoever upon the said expropriated property. 4th, the defendants are also entitled to the costs of the action.

*Judgment, accordingly.*

Solicitor for plaintiff: *R. H. Murray.*

Solicitor for defendant: *C. Tremaine.*

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