

THE KING, ON THE INFORMATION OF THE ATTORNEY-  
GENERAL OF CANADA,

1918

Feb. 6.

PLAINTIFF,

AND

THE HALIFAX ELECTRIC TRAMWAY COM-  
PANY, LIMITED, a body corporate, and THE  
EASTERN TRUST COMPANY, a body cor-  
porate, Trustee,

DEFENDANTS.

*Expropriation—Gas and electric plant—Valuation—Agreement.*

The Crown having expropriated land used as a site for a gas and electric plant, an agreement was entered into which provided for a complete reinstatement of the owners on a new site.

*Held*, that in ascertaining the value of the lands agreed to be conveyed to the owners by the Crown, the value to be ascertained under the terms of the agreement was not the value to the grantors, but the value to the owners; that the owners were entitled to compensation only according to the terms of the agreement, with interest on the unpaid amount from the time of surrendering possession of the lands expropriated; but they could not claim for the additional value of the old site as compared with the new site, in regard to the increased cost of erections and operations, nor for the speculative value of the land.

**INFORMATION** for the vesting of land and compensation in an expropriation by the Crown.

Tried before the Honourable Mr. Justice Cassels, at Halifax, N.S., September 11, 12, 13, 14, 1917.

*T. S. Rogers*, K.C., and *T. F. Tobin*, K.C., for plaintiff.

*H. A. Lovett*, K.C., and *L. A. Lovett*, K.C., for defendant.

CASSELLS, J. (February 6, 1918) delivered judgment.

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An information exhibited on behalf of His Majesty the King by the Attorney-General of Canada to have it declared that certain lands referred to in the information are vested in His Majesty, and to have the compensation therefor ascertained.

The properties in question comprise a parcel of land in the City of Halifax upon which were erected the gas plant and electric light plant, and also a portion of the Halifax Tramway Company's plant. The Tramway organization operates the gas plant and supplies gas to the City of Halifax; they also operate the electric tramway and the electric light company, and furnish electric light to the people of Halifax.

At the trial counsel for the plaintiff and defendants kindly offered to furnish a statement showing the dimensions in square feet of the property expropriated, also of the property owned by the defendants and utilized for the purposes of their new plant—also the property purchased by the Crown on the west side of Water Street to be conveyed to the defendants, and also of the land part of which was known as the Government wharf property and conveyed to the defendants.

Owing to the terrible disaster which occurred in Halifax there was delay in furnishing this memorandum which was received by the Registrar on February 4th, 1918. I will append a copy of this statement to these reasons. *Infra*, p. 73.

I may add that my reasons for judgment were prepared long prior to the Halifax catastrophe and I have not been influenced in any way by what occurred since.

The Crown by the information tendered to the defendants the sum of \$364,923. The details of this

tender are set out in the 7th paragraph of the information.

The defendants by their statement of defence claim the sum of \$901,812.84.

The particulars of their claim are set out in the defence. In the particulars, Sec. "K." sets out:

"The property expropriated has for some  
 "seventy-five years been utilized as the site of the  
 "gas works, and from its character, size and loca-  
 "tion has special adaptation to the conduct of the  
 "defendants' undertaking of supplying gas to the  
 "citizens of Halifax." By reason of the long user,  
 "above mentioned, the defendants are not subject  
 "to injunction or damage suits by adjoining pro-  
 "prietors on account of the emission of fumes or  
 "noxious gases incident to the carrying on of the  
 "undertaking, but under the laws of the Province  
 "of Nova Scotia, as interpreted by its Supreme  
 "Court, the defendants are liable to be enjoined  
 "at the suit of neighbouring proprietors, if they  
 "conduct these operations on a new site."

This claim need not be considered, as on the argu-  
 ment of the case, Mr. H. A. Lovett stated that they  
 had come to an arrangement in regard to this claim,  
 and it was unnecessary for the court to consider it.

The defendants set out the following:

"So far as the defendants are aware at the  
 "present time it will be impossible for the defend-  
 "ants to secure another site in a location suffi-  
 "ciently near the centre of the city to enable the  
 "undertaking to be successfully carried on as a  
 "business enterprise, except on payment of very  
 "large sums to neighbouring proprietors for the

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“conveyance of their properties, or for prospective damage to their properties.”

“The defendants are willing to co-operate with the Crown in the selection of a new site, but claim that they are entitled to be indemnified by the Crown against loss and damage to their business by reason of the plant being located on such new site.”

The expropriation plan was registered on February 13th, 1913. The representatives of the Crown and of the defendant company acted together in a friendly manner in endeavouring to procure new premises for the defendants in lieu of the premises expropriated by the Crown, and eventually the new site upon which the present plant is erected was procured.

In order to reinstate the defendants it was eventually agreed between the representatives of the Crown on the one part, and the representatives of the company on the other part, that the company should utilize the property owned by them not expropriated, and that the Crown with the object of reinstating the defendants upon lands sufficient for the operation of their business should convey to the company a certain piece of land the property of the Crown forming part of what is known as the old lumber yard in the City of Halifax, and should also procure a further piece of land on the west side of Water Street, these two parcels of land being contiguous to the lands of the company not expropriated, the three parcels containing the square feet shewn in the memorandum annexed.

The information was filed on March 29th, 1915, and the statement in defence on July 14th, 1915.

On August 14th, 1917, and shortly previous to the trial, an agreement was arrived at, as follows:

“1. It is agreed between the parties that all “items of compensation at issue in this action are “settled as follows, subject only to determination “by the Court of the matters provided for in “paragraphs 3 and 4 hereof, and that His Majesty the King shall pay to the defendant, The “Halifax Electric Tramway Company, Limited, “the following sums, viz.:

“(a) As the value of all the buildings upon the lands described in paragraph 3, sub-sections 4, 5, 6, 7, 8, 9, 10, 11a, 11b of the information the sum of .....\$ 17,500.00

“(b) As the value of the car barn, storage shed and buildings upon the lands described in paragraph 3, sub-section 12 of the information the sum of ..... 20,000.00

“(c) As the value of the gas plant, consisting of coal and coke handling plant, retort benches, carburated water gas set, scrubber, condenser, gas blowers, annular condenser, exhausters, tar extractor, washer, scrubber, purifiers, oil tanks, stationmeters, pipes and valves in yard, steam and feed pipe, etc., described in paragraph 4, sub-section “A” of the information, the sum of..... 152,460.00

“(d) For the cost of removal of auxiliary machinery, the sum of..... 500.00

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- “(e) As the value of the gas plant buildings, consisting of meter repair shop, wagon shed and store-room, blacksmith shop, oxide shed, boat house, coal store, drip and valve houses attached to large and small holders, retort house, purifying house, exhaust and scrubber house, condenser house, meter house, oxide building, chimney and fences, described in paragraph 4, sub-section “B” of the information, the sum of . . . . . 82,145.00
- “(f) For expropriation of tracks, Pleasant Street to Point Pleasant Park, the track extending south from Morris Street to car barn or storage shed, including tracks in shed and yard, described in paragraph 4, sub-section “C” of the information, the sum of . . . . . 23,695.00
- “(g) As compensation for increased cost of operation of new tracks, the sum of . . . . . 7,750.00
- “(h) For cost of increased track and overhead construction, the sum of . . . . . 13,835.00
- “(i) For cost of connecting new gas plant with gas main, not included in tender . . . . . 6,867.25
- “(j) For cost of additional expenses to Tram Company in carting coal pending completion of new premises, not included in tender . . . . . 1,500.00

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“(k) For gas plant machinery not included in tender, consisting of that part of the boat house equipment, blacksmith shop and testing laboratory not removed by defendant and expense in removing part taken away..... 2,500.00

“(1) The value of the wharf structure on the lands and lands covered with water, described in paragraph 3, sub-sections 1 and 2b of the information ..... 5,000.00

Total.....\$335,752.25

“2. The defendant, The Halifax Electric Tramway Company, Limited, admits having received from His Majesty the King the sum of \$250,000 on account of compensation payable herein, as follows, viz.:—

On the 21st December, A.D. 1915, the sum of .....\$100,000.00  
 On the 15th March, A.D. 1916, the sum of .. . . . . 50,000.00  
 On the 31st May, A.D. 1916, the sum of .. . . . . 50,000.00  
 On the 28th November, A.D. 1916, the sum of ..... 50,000.00

Total.....\$250,000.00

“3. The following matters referred to in the information are to be tried and the amount of compensation to be paid by the Crown determined by the Exchequer Court, subject

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“to the rights of appeal by either party, viz.:

“(a) The value of all the lands and lands covered with water of the defendant (exclusive of buildings and fixtures and of the wharf structure) expropriated by the plaintiff under the provisions of the Expropriation Act, Ch. 143, R.S.C., 1906.

“(b) The compensation indemnity and relief, if any is allowed by the Court, to which the defendant may be entitled under paragraph 2, sub-paragraph “K” of the defence herein.”

“4. (1) The parties also agree that the value to  
“the defendant of the lands on the west side  
“of Lower Water Street and south side of  
“Fawson Street, in the City of Halifax,  
“described in a certain undertaking given  
“by His Majesty to the defendant, The  
“Halifax Electric Tramway Company, Lim-  
“ited, on the 22nd day of December, A.D.  
“1916, whereby His Majesty undertook with-  
“in a reasonable time after the questions at  
“issue herein are finally determined to con-  
“vey or cause to be conveyed the said lands  
“to the said defendant, The Halifax Electric  
“Tramway Company, Limited, shall be de-  
“termined and disposed of in this action,  
“and that the amount for which His Majesty  
“is to receive credit by reason of providing  
“and conveying said lands to the defendant,  
“The Halifax Electric Tramway Company,  
“Limited, is to be finally settled and deter-  
“mined herein subject to the rights of appeal



“by either party. Proceedings to be amended accordingly.

“(2) Nothing herein contained shall prejudice any claim which the defendant, The Halifax Electric Tramway Company, may have for compensation for the value and cost of demolition of the two car barns on the east side of Water Street, property of defendant, to enable the said defendant to use land offered by Government for its gas plant, which claim for compensation, if any, is also to be adjudged in this action.”

Sub-sec. “B” of paragraph 3 of the agreement need not be considered, as it refers to the defence, as previously indicated, withdrawn from my consideration. I think the agreement in question shows an extremely liberal offer on the part of the Crown. It is practically recouping the defendants the full value of the plant, and also compensating them; and paying them other sums, such, for instance, as compensation for increased cost of operation of the new tracks, the cost of increased track and overhead construction, etc.

The effect of this agreement is that all matters in controversy between the parties have been agreed upon, with the exception of clause 3 of the agreement, namely, the value of all the lands and lands covered with water of the defendants exclusively of buildings and fixtures.

And secondly, what is covered by clause 4 of the agreement, that is the value to the defendants of the lands procured by the Crown and agreed to be conveyed to the defendants, to which I have referred.

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It will be noticed that there is a difference in regard to the basis for ascertaining the value of the lands which have been expropriated, and the basis upon which the lands procured by the Crown and conveyed to the defendants. In the former case the value of the lands expropriated is to be ascertained, and it has been pressed with force by counsel for the defendant that that value is the value to the defendants to be ascertained according to the principles settled by such cases as *Corrie v. MacDermott* (1); *Cedars Rapids v. Lacoste* (2); *Pastoral Finance v. The Minister* (3); *Lake Erie v. Schooley* (4); and I may refer to a very important case not reported in the regular reports, but to be found reported in full in *Hudson on Compensation* (5); *Metropolitan & District Railway Co. v. Burrow*.

Later on when I discuss the value of the lands expropriated I will deal with this contention of the defendants.

In ascertaining the value of the lands agreed to be conveyed to the defendants by the Crown the value to be ascertained is not the value to the grantors, but it is the value to the company. For instance, a portion of these lands was at the time the Crown procured them covered with buildings. These buildings were of no value to the defendants. They necessarily had to be torn down, and the only offset the Crown is entitled to would be an offset for the value to these defendants for the purposes of their new works. I will have to give my views later on when dealing with the value of these lands.

(1) (1914) 83 L.J.P.C. 870 at 872.

(2) [1914] A.C. 569; 16 D.L.R. 168.

(3) 84 L.J.P.C. 26 at 28.

(4) 53 Can. S.C.R. 416; 30 D.L.R. 289.

(5) (1905) Ed.

The Crown, it will be noticed by the agreement which I have recited in full, has at various times advanced sums of money to the defendants, amounting in all to the sum of \$250,000.

The defendant taking advantage of the large sums of money agreed to be paid by the Crown, set to work to rebuild their plant, and with a much larger and more efficient plant upon the new site, the Crown in the meantime allowing them to remain in occupation of their old premises so as not to have their business interfered with.

In the report of the president and directors of the Halifax Electric Tramway Company, Limited, for the year ending December 31st, 1915, the directors report as follows:

“Considerable sums have been expended during  
 “the year on capital account in order that the  
 “company would be in a position to meet the  
 “growing demand upon its services. The principal items of expenditure under this heading are  
 “new cars, and electrical equipments for the  
 “same, extensions of electric lighting system, gas  
 “mains, and additions to repair shop building.  
 “Work has been started on the construction of  
 “the new gas plant to replace the old plant which  
 “has been expropriated by the Dominion Government. *Upon the completion of this work the*  
 “*company will have the most modern and economical plant obtainable.*”

An analysis of the schedules showing the increased earnings from the years 1904 to 1915, shows a steady increase in the volume of their business. The report for the year 1916 might also be referred to as showing an increase in the business for the year

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1916 over that of 1915, and no disruption of their business caused by the movement to the new premises.

The first question that I am called upon to determine is the market value of the lands expropriated by the Crown. I will deal subsequently with the claim put forward on behalf of the defendants' counsel for the added value, namely, the special value to the defendants over and above the market value by reason of the lands expropriated having a greater value to the defendants than the lands upon which they have been reinstated.

The only evidence called on behalf of the defendants was the evidence of Henry Roper. He is called not as an expert in land values. At the opening of his evidence, Mr. Lovett states as follows:

"I am examining Mr. Roper, my Lord, as to the "estimates on the buildings. Perhaps his qualifications will be admitted?" Counsel for the Crown stated "Certainly."

If it were necessary to qualify Mr. Roper as an expert on land values, no evidence of his qualification as such has been given.

During the progress of his evidence, having testified to the value of the buildings, he is asked as follows:

"Q. Assuming that those buildings were on that "property (referring to the property expropriated) with no machinery in them, and with no business carried on there, with no equipment in them, what would you say would be the fair "market value in 1913 of that property?

"A. As a water site property?

"Q. Yes. A. Including the wharf?

“Q. The whole of the land, land covered with water, wharves, and buildings empty?

“A. Including the wharves?

“Q. Yes. A. 75 cents a foot.

“Q. Including the buildings as well, without any equipment in them? A. I would say the land was worth about 75 cents per foot, and those buildings \$60,000.”

I called Mr. Lovett's attention in the following way:

“HIS LORDSHIP—Supposing before it comes to a conclusion that the market value is the only thing that is open in regard to your lands, I don't think you gave any evidence in regard to that.

“*Mr. Lovett*—Our evidence is in, as far as we intend to give any evidence in that respect.”

Dealing with the market value of the lands expropriated apart from the special claim put forward on the part of the defendants I am of opinion that the values placed upon it by Mr. Clark and his associates is the full value, and also a very liberal value.

Mr. Clark places a value on a portion of the lands of 50 cents per square foot for the land, and 30 cents per square foot for that portion covered with water.

Mr. Lovett apparently was himself impressed with the liberality of his valuation, as when I mentioned it, the following will be found reported in the evidence:

(His Lordship is referring to Clark.)

“HIS LORDSHIP—His whole evidence is given as to the value of the land. The 50 and the 30 are for the land without the buildings.

“*Mr. Lovett*: A good market price, my Lord.”

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“HIS LORDSHIP—That is what the Crown of-  
“ferred?

“*Mr. Lovett*: Yes, my Lord.”

The property referred to in the evidence is immediately adjoining the property that was in question before the court in the case of *The King v. Wilson* (1). These values were allowed in that particular case, and on appeal to the Supreme Court of Canada this case was affirmed.

I think Mr. Clark and his associates have, as I have stated, made a liberal offer. The perusal of his evidence would indicate that he and his associates valued the land as if there was a business being carried on upon it. As to the value of the other lands expropriated, I accept Mr. Clark's valuation, and will deal later with any special claim.

If the sum allowed by Mr. Clark and his associates, namely, \$73,271, as shewn by the attached memorandum, is allowed, I think that would compensate the defendants amply for the value of the lands expropriated based upon market value.

The next question arises as to the value to the defendants of the lands agreed to be conveyed to the defendants. The agreement in question reads: “that  
“the value to the defendants \* \* \* shall  
“be determined and disposed of in this action,  
“and that the amount for which His Majesty  
“is to receive credit by reason of providing and  
“conveying said lands to the defendants is to  
“be finally settled and determined herein, etc.”

I will deal first with the lands on the west side of Water Street. These lands embrace an area of 39,180 square feet, and upon them were erected buildings.

(1) 15 Can. Ex. 283, 22 D.L.R. 585.

Mr. Clark in his evidence states that he paid for these lands the sum of \$65,750 for the whole block. He stated, however, that the Government were held up and that the fair market value for these particular lands would be \$45,000. That includes all the property on the west side of Water Street. He is asked by Mr. Rogers, counsel for the Crown:

“Q. Making due allowance for the value of the buildings, in accordance with your opinion and judgment, what would the value of the land be?

“A. I valued the buildings at about \$25,000.

“Q. What would the square foot-value of the land be without the buildings?

“A. About 50 cents, roughly speaking.

“HIS LORDSHIP—About \$20,000?”

“A. About \$20,000 for 39,180 feet of land.

“*Mr. Rogers*—On the basis of \$45,000?”

“A. On the basis of \$45,000.”

This land was being acquired by the defendants for the purpose of reinstatement; and as I have pointed out they are to be charged with the value of the land to them. It is manifest that the buildings were of no use and would have to be demolished.

I think, therefore, that under the terms of the agreement set out, which is a reinstatement agreement, the Crown should at the outside receive credit for the value of the land at the sum of \$20,000, less, however, certain deductions that will have to be made on account of placing the land in shape for the purposes of the defendants' business. There is not much contest in regard to these items:

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|--|-------------|
| Net cost of demolishing old buildings, excavating to street level and filling in cellars . . . . .       | \$ 8,268.03 |
| The retaining wall on Morris Street, which would appear to be essential . . . . .                        | 637.58      |
| Cost of completion, cutting off slope and grading portion of street level . . . . .                      | 2,500.00    |
| Demolishing remaining building . . . . .   | 75.00       |
| Estimated cost of retaining wall on west boundary corner-lot and protecting adjoining building . . . . . | 2,206.00    |
|  | <hr/>       |
|  | \$13,686.61 |

I do not think the estimated cost of retaining wall along the west boundary of the property should be allowed. This wall is not built and most likely never will be built.

The above items amount to \$13,686.61. I think on the evidence it is shown that this expenditure is required in order to place the defendants in the same position in regard to the lands as they were before the expropriation.

It would leave to the Crown an offset in respect to this property of only the sum of \$6,313.39, a very small amount compared to the \$65,000 paid for this particular piece of land.

The area of the land agreed to be conveyed by the Crown and forming part of the old Lumber Yard is as stated, 37,900 square feet—land 20,100 square feet and land covered by water 17,800 square feet. This land is valued by Mr. Clark at the sum of \$15,390, viz., 50 cents a square foot for land and 30 cents per square foot for land covered by water. From this amount there should be deducted:



|   |             |
|---|-------------|
| 1. Cost of removal of cable huts .....  | \$ 100.00   |
| 2. Expense caused by retention of cables<br>and cable huts while work was going<br>on .. .. .   | 500.00      |
| Expense caused by removal of store-<br>house and contents after original lo-<br>cation was fixed by Government En-<br>gineer .. . . .                               | 200.00      |
| 3. Excavation grading to level of street<br>and filling in lower portion to water<br>front level .. . . .   | 2,362.48    |
| 4. Construction of concrete retaining wall<br>across centre of car barn and on prop-<br>erty between car barn and gas works<br>to separate high and low levels..... | 3,328.00    |
| 5. Piling work for car barn.....  | 2,037.75    |
| 6. Constructing coffer-dam .....  | 1,160.00    |
| Excavating to rock foundation and<br>building reinforced concrete founda-<br>tion wall.. . . .  | 2,064.00    |
| 7. Concrete piers built for car barn col-<br>umn supports .....   | 1,060.00    |
| 8. Cost of excess amount of concrete used<br>in car barn wall foundation due to<br>physical defects of site; details draw-<br>ing 134C .. . . .                     | 1,536.00    |
|   | \$14,348.23 |

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Mr. Rogers, counsel for the Crown, stated that with reference to the items in Exhibit 16, on page 7 of the evidence, numbered 1 to 8, aggregating \$14,348.23, as to expenditures with reference to the Lumber Yard property, the Crown is satisfied that

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the estimates made in respect thereof are not excessive.

This would leave an offset of \$14,348.23 which, deducted from the value of the lands, would leave the sum of \$1,041.77. Deducting these two items of \$6,313.39 and \$1,041.77, in all \$7,355.16, from the value of the lands expropriated \$73,271, there would be due the defendants the sum of \$65,915.84 for the lands.

I come now to deal with the claims put forward by counsel for the defendants. Apparently they are not satisfied with the liberal treatment accorded to them by the representatives of the Crown—having got so much they desire to get more. They allege that the lands expropriated are better adapted for the erection of their new plant and that a saving of over \$100,000 would be gained had they erected their plant on their property expropriated instead of on the new site.

A further ground is put forward on the part of the defendants that the cost of operation of the business of the company on the new site as compared with what the cost would be had the new plant been erected on the old premises would amount to \$7,900 a year, and they ask that this amount should be capitalized and a further sum in the neighbourhood of \$160,000 be added to their claim. This method of arriving at the sums is dangerously in line with the method condemned in the case of the *Pastoral Finance v. The Minister* (1); and the *Lake Erie & Northern Railway Co. v. Schooley* (2).

Both of these claims, namely, the claim for the alleged additional value of the old site as compared

(1) 84 L.J.P.C. 26 at 28. (2) 53 Can. S.C.R. 416, 30 D.L.R. 289.

with the new site, in regard to the increased cost of the erections and also the increased cost of operation, is to my mind of a very imaginative character.

I refer to some of the evidence in the case. Mr. Malison is the Managing Director of the Tram Company and gives evidence. It would appear that the business was stopped on the old site in April, 1917. His evidence in chief shows what took place between himself and Mr. Gutelius. The defendants were to get from the Crown lands sufficiently wide to serve the purposes of the Company.

The following portion of his evidence explains the situation and capacity of the plant, etc., on the new premises as compared with the old premises. It must also be borne in mind that the Crown has paid the full value of the old plant, which has been in steady use a long number of years, and that by the assistance of the Crown they have what is an up-to-date plant. Necessarily a considerable sum of money would have to be advanced by the company for the purpose of obtaining a much better result from the new plant on the present site than of a plant similar to that situate on the old property.

Mr. Malison states, as follows:

“*Mr. Rogers*—Q. You spoke of the capacity of your plant at the time of the expropriation, February 13th, 1913, as being 3,300 kilowats of machinery; what is the capacity to-day, on the same basis?—A. About 6,000.

“Q. Nearly double?—A. Yes.

“Q. You spoke of having 2,100 horse-power in your boilers, in steam power?—A. 2,100 horse-power, rated capacity.

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“Q. What is that to-day?—A. In round figures, that is about 5,000 horse-power, the rated capacity of the city.”

“Q. You spoke then of the peak load being 3,400 kilowatts—A. Yes.

“Q. What would that be to-day?—A. Last December or last January, which is the test of the peak load always, we had approximately 6,000 horse-power.

“Q. So that the capacity of your electric plant at any rate has nearly doubled, speaking generally?—A. Yes, I consider it more than double.

“Q. You have done that by the installation of new boilers?—A. By the installation of new boilers and new machinery.

“Q. New generators?—A. New generators.

“Q. And new machinery?—A. Yes.

“Q. These new boilers and new machinery were installed on the old property you had before?—A. Yes.

“HIS LORDSHIP—Q. On the expropriated property?—A. No, my Lord, on the other property.

“*Mr. Rogers*: Q. At the time of the expropriation what was your gas producing capacity at the old plant?—A. About 200,000 feet capacity per day; if everything was all right.

“Q. That was your maximum capacity; 200,000 cubic feet per day would be your maximum capacity?—A. Yes.

“Q. On your old plant?—A. At our old plant.

“Q. What is the maximum capacity of your new plant to-day, 400,000?—A. Well, it is more than that; it is over 600,000.

“Q. That is in gas capacity alone?—A. Yes.

"HIS LORDSHIP: Q. On your new premises?—A.  
 "On our present premises, my Lord.

"*Mr. Rogers:* Q. You have been operating your  
 "new premises since January of this year?—A. I  
 "think it was April.

"Q. I have not the figures of your sales of gas.  
 "What would your average sales of gas be in the  
 "current year?—A. We are selling now about  
 "220,000 cubic feet of gas per day, on the average.

"Q. What would your average sales of gas be  
 "in 1913, per day?—A. Subject to verification, I  
 "would say 120,000 to 125,000 cubic feet per day, on  
 "the average.

"Q. Throughout the year 1913 or 1912?—A. Yes.

"Q. You can correct these figures afterwards,  
 "if you find you have made a mistake in any of  
 "them.—A. I might say, in addition, if I may, that  
 "the average for the current year, when we take  
 "into consideration this coming winter, will be much  
 "greater than the figures I have given to you.

"Q. You have given us 220,000?—A. That is,  
 "up to date.

"Q. Perhaps you have already estimated, that  
 "is your Company in Montreal, what you think your  
 "output of gas will be for next year?—A. For  
 "1918?

"HIS LORDSHIP: Q.—You distinguish between the  
 "cold days and the warm days?—A. Yes, my Lord.  
 "Our consumption is greatest in December, of  
 "course.

"*Mr. Rogers:* Q. For 1918 would you say 300,-  
 "000?—A. Much more than that. My estimate for  
 "this year will be 300,000 per day, and my estimate

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“for next year will be at least twenty-five per cent.

“greater than that.

“HIS LORDSHIP: Q. Does that take into account

“from January to January? A.—Yes, for the cur-

“rent year.

“Q. The full winter and the full summer?—A.

“Yes.

“*Mr. Rogers*: Q. You are looking for a steady

“increase?—A. I am looking for better than a

“steady increase in gas because we are only really

“beginning to develop the gas business as a business

“proposition now, now that our construction is com-

“pleted.

“Q. What is the size of the present gas holder?—

“A. It has a capacity of 300,000 cubic feet.

“Q. The old ones had a capacity of how much?—

“A. The two old ones had a capacity, I think, of

“190,000 cubic feet.

“Q. The two of them together?—A. The two

“together.

“Q. They were much smaller holders?—A.

“They were.

“Q. Of a different type?—A. Yes, a different

“type.

“Q. A type not now made?—A. Not on this side

“of the water.

“Q. Obsolete?—A. Not obsolete, but they have

“developed a holder of cheaper construction, that

“serves the purpose.

“Q. Better?—A. I would not say better, but as

“good.

“Q. And of greater individual capacity?—A.

“That would not necessarily be so.

“Q. It is obvious that it is so, in this case?—A.  
“It is quite so, in this case.

“Q. The present gas holder does not occupy as  
“much square-foot space as the two old ones did?—

“A. I could not say as to that actually.

“Q. Guess at it?—A. There is some little differ-  
“ence, I think.

“HIS LORDSHIP: Q. Almost the same shape as  
“the two old ones?—A. Almost the same.

“Q. Is the type of these any different?—A. This  
“present holder, the new one, is much higher than  
“the other ones.

“Q. Can you make it higher still?—A. Yes, sir,  
“we can put another lift on it.

“Q. So that you can get any quantity more by  
“elevating it, up to a safe limit, without taking any  
“more land?—A. Yes, without taking any more land.

“*Mr. Rogers:* Q. As has been stated, on the west  
“side of Water Street there is available land there,  
“on the land obtained from the Government, for  
“another gas holder of equal capacity?—A. Yes.

“Q. What other products do you get in connec-  
“tion with the gas business, or did you get before  
“the expropriation; of course you got coke.—A.  
“Coke and tar. We did not save our ammonia.

“Q. At the time of the expropriation you were  
“not saving your ammonia?—A. No.

“Q. You are doing so, now?—A. Yes.

“Q. And on these premises which you got from  
“the Government?—A. Yes.

“Q. Does that require an extra building?—A.  
“It requires an underground tank.

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“Q. What else are you saving; what other products are you saving?—A. We are not saving any other products.

“Q. Have you anything in mind?—A. Why, we expect to refine the tar and the ammoniacal liquor.

“Q. Of course your sales of coke, or the products of coke, tar, and ammonia, including the refining of the ammonia, will increase rateably with the gas product itself? A.—With the increased output of gas we will make more of these products.

“Q. Proportionately?—A. Yes.

“Q. Previous to the expropriation you had three car barns?—A. Four.

“Q. Three of them on what we call the power plant property?—A. Yes.

“Q. The fourth on the rear portion of the gas property?—A. Yes.

“Q. You now have how many car barns?—A. Two.

“Q. The capacity of those two is equivalent to the capacity of the former four?—A. Yes.

“Q. More, is it not?—A. A little more.

“Q. What percentage more?—A. Not ten per cent.

“Q. The construction of the new car barn is of the latest and most modern, I believe? A.—Yes, it is a very good design.

“Q. The foundations are much heavier and of a much more permanent character than any one of the four former car barns?—A. Very much more.

“Q. Built with a view to permanency?—A. Yes.

“Q. The idea on the part of the Company being that that additional capital expenditure in that way would pay in the long run? A.—To some ex-



“tent that would be right; but the permanency, or  
 “rather the excess permanency in that building as  
 “compared with the others was necessitated by rea-  
 “son of the difficulty, first, in obtaining a good  
 “foundation, and secondly, by reason of the fact  
 “that we have to support the rear end, or the water  
 “side of the end of that car barn on stilts, in other  
 “words, because we are so much above the level of  
 “the ground.

“Q. I understand that.—A. That necessitated a  
 “very much more permanent type of building, foun-  
 “dation, and under-supports than would otherwise  
 “have been the case.

“Q. But at the same time, in all your re-construc-  
 “tion work, I understand you to say that you had  
 “in view the matter of lasting and permanent quali-  
 “ties?—A. Quite true.

“Q. That is true, all through?—A. True, all  
 “through,” which he explains is the present situa-  
 tion.

A considerable amount of evidence was given in regard to the probable future of Halifax. One prominent witness seemed to figure on a growth to a population of 150,000. It has been a city for a great number of years with the present population of under 50,000, and I think it would strain the credulity of a Judge to figure on any basis of this character. If such an event did occur, there is no trouble in building another gas holder, the site for which was marked out on the plan of the property west of Water Street, and there will be no difficulty in doubling the capacity of each of these gas holders—and there will be ample for the supply for a community even far in excess of what these imaginative

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gentlemen look forward to. So with regard to car barns. There is ample room for any addition,—and if the population of Halifax ever did increase to a very large extent, it will be proper practice, as admitted by Mr. Malison on his re-examination, towards the end of the evidence, to place car barns in different portions of the city, a practice in vogue in all other cities.

In the case of *Corrie v. MacDermott* (1), which I have referred to, the defendants desired to construe the words “the value of the land to them” as if they read the unrestricted value—and their Lordships held that was the incorrect way of viewing the case, and that they were only entitled to the value of their interest in the lands, and there is language in that case which would indicate that an agreement should be construed by reference to the law governing ordinary cases of expropriation. I think the case before me is of an entirely different character. It seems to me to allow any such claim as put forward on the part of the defendants would be doing violence to the whole intention of the parties. I think they have entered into an agreement which provided for a complete reinstatement of the defendants, and having regard to all the circumstances of the case this is the view that I entertain.

There will be judgment for the defendants for the sum of \$401,668.09, from which will be deducted the sums referred to in the agreement advanced by the Crown. The defendants have had occupation of their former premises, and have been carrying on, as I have stated, their business as usual until April of 1917. They should be allowed interest on the bal-

(1) (1914) 83 L.J.P.C. 370 at 372.

ance of \$151,668.09 from that time until judgment. The defendants are entitled to their costs of the action.

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*Judgment for defendants.\**

Solicitor for plaintiff: *T. F. Tobin.*

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Solicitors for defendant: *Lovett & Roper.*

\* Reporter's Note: The following is a copy of the agreement referred to on p. 48:

"It is agreed between the parties that the following information be supplied to the Court in response to the request in writing of the Registrar of the Court dated December 21st, 1917, and that for the purposes of this action the said information shall be considered by the Court as if it had been given by way of sworn testimony at the trial of the action.

1. The exact area in square feet of the lands of the defendant Company expropriated by the Crown is as follows:

(a) Land and land covered by water of defendant Company expropriated by the Crown, the title to which is admitted by the Crown:—

- (1) Land ..... 189,480 square feet  
Area of fill in post confederation grant 3,200 square feet  
Area of Gas Lane ..... 2,794 square feet
- (2) Land covered by water ..... 19,000 square feet

Total.....214,474 square feet

(b) Land covered by water included in the grant by the Provincial Government in 1876, the title to which is not admitted by the Crown—53,300 square feet.

2. The exact area of the lands of defendant Company now utilized by it for its new plant and which area is not expropriated by the Crown is equal to 39,500 square feet plus the ground taken up by the location of the elevated conveyor across the yard from the unloading wharf of the Dominion Coal Co. to the Coal Storage buildings of the Gas Plant.

3. The exact area of the lands procured by the Crown and to be conveyed to the defendant Company on the property, situate on the west side of Water Street, is 39,180 square feet.

4. The exact area agreed to be conveyed to defendant Company off the lumber yard property is 37,900 square feet, made up of land—20,100 square feet, and land covered by water, 17,800 square feet.

5. The exact sums agreed by Mr. Clark and his associates to be paid for the lands expropriated from defendant company are as follows:—

For portion marked on plan Exhibit "B" as area in fill  
109,800 square feet at the rate of 50c. per square foot..\$ 54,900

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|  |          |
|--|----------|
| For portion marked on plan Exhibit "B" as "Area 2,600 square feet," at the rate of 50c per square foot.....  | 1,300    |
| For portion marked on plan Exhibit "B" as "Area covered by water in grant prior to Confederation, 19,000 square feet," at the rate of 30c per square foot.....   | 5,700    |
| For 4,440 square feet of the land marked on plan Exhibit "B" as "Area of land (car barn and field) 42,500 square feet," said 4,440 square feet being the part thereof on which the car barn was erected, at the rate of 25c per square foot .....    | 1,110    |
| For the balance of the land marked on plan Exhibit "B" as "Area of land (car barn and field), 42,500 square feet," after deducting said 4,440 square feet last above mentioned, leaving 38,060 square feet, at the rate of 10c per square foot ..... | 3,806    |
| For the portion marked on plan Exhibit "B" as "Area of land in house lots, 34,580 square feet," at the rate of 10c per square foot .....   | 3,458    |
| For the portion marked on plan Exhibit "B" as "Area of fill on grant of 1876, 3,200 square feet," at the rate of 50c. per square foot .....  | 1,600    |
| For portion of Gas Lane omitted, 2,794 square feet, at the rate of 50c. per square foot .....  | 1,397    |
| Total.....   | \$73,271 |

6. Mr. Clark and his associates did not value the lands forming part of the lumber yard to be conveyed to the defendant company. Mr. Clark gave some evidence at the trial as to what he considered the value.

Dated at Halifax, N.S., this 22nd day of January, A.D. 1918.

(Sgd.) *T. F. Tobin*, Solicitor of Attorney-General of Canada.

*L. A. Lovett*, of Counsel for Defendant, The Halifax Electric Tramway Co., Limited.