

HIS MAJESTY THE KING ON THE INFORMATION
OF THE ATTORNEY-GENERAL OF CANADA.

1917
Nov. 5.

PLAINTIFF,

v.

VASSIE & COMPANY, LIMITED; JOSEPH AL-
LISON; PRUDENTIAL TRUST COMPANY,
LIMITED; THE PETRIE MANUFACTUR-
ING COMPANY, LIMITED (4 cases).

DEFENDANTS.

Expropriation—Compensation—Warehouse property—Value.

The Crown had expropriated a number of lots in the business section of the city of St. John, N.B., specially adapted for warehouse purposes.

Held, that the same value per square foot does not attach to small lots as to a larger lot, and that apart from the market value of the land the owners were entitled to an allowance for the compulsory taking, together with interest from the date of expropriation.

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

Tried before the Honourable Mr. Justice Cassels, at St. John, N. B., September 24, 25, 1917.

Daniel Mullin, K.C., for plaintiff.

F. R. Taylor, K.C., and *C. F. Sanford*, for defendants.

CASSELS, J. (November 5, 1917) delivered judgment.

These four cases were tried together before me at St. John, it being agreed that the evidence ad-

1917

THE KING
v.
VASSIE & Co.;
ALLISON;
PRUDENTIAL
TRUST Co.;
PETRIE MANU-
FACTURING Co.

Reasons for
Judgment.

duced should be treated as if adduced in each separate case, with the right to any of the parties to adduce any further evidence that would be applicable to the particular case.

The informations were exhibited to have it declared that certain lands in the City of St. John fronting on Prince William Street, and running through to what is called St. John or Water Street, are vested in His Majesty the King, and to have the compensation for these lands ascertained. The lands are expropriated for public works, namely, the erection of an elevator in the City of St. John.

I will have to deal separately with each case, but before doing so may mention some facts which are common to all of the four cases.

Exhibit No. 1 in the case of *The King v. Vassie* shows the different properties in question. Lot No. 1 is the property of Vassie & Co. The Allison lot on the same plan is lot No. 6, which is marked on the plan "The Salvation Army." The Prudential Co. lots are lots 3 and 5 on the plan—and Petrie lot is marked 8 on plan. All of these properties are unquestionably excellent warehouse sites, if there are warehouses to be erected on them.

The evidence of all the witnesses agrees that Prince William Street is one of the best streets in the City of St. John. On the east side of this street is erected the post-office and a large number of other public buildings, banks, etc. On the west side of the street and fronting on the street, all of these lots, from 1 to 8 inclusive, is vacant property (with the exception of one or two sheds) having no buildings on them.

St. John Street or Water Street is considerably below the level of Prince William Street, and is not far from the water of the harbour of St. John. It is proved that having this difference in level between Prince William Street and Water Street is of considerable advantage for the purposes of wholesale warehouses. All the properties in question have railway trackage, a matter of considerable importance for a warehouse property.

Prince William Street and Water Street are so situate that any person carrying on business on the sites in question would save considerably in the way of cartage from the proximity of these particular sites to the Custom House, and also to the waterfront, and to the railways. The saving of haul being considerable both by reason of the distance saved and the hills which are avoided.

I think it may be taken for granted, having regard to the evidence, such as that given by Senator Thorne, a very experienced and capable witness, and also to evidence given by other witnesses, that it would be difficult if not impossible to obtain in St. John in any other situation property equally adapted for the purpose of the erection of a wholesale warehouse and carrying on the business thereon. Other properties might be obtained, but the most available sites are covered by buildings, unsuitable as a rule for warehouse purposes,—and to acquire such sites would necessarily involve considerable expenditure by reason of these buildings having to be torn down as useless for the purposes of a warehouse business. On the other hand, the values of properties in the City of St. John have been and are extremely low compared to values in any other

1917

THE KING
v.
VASSIE & CO.;
ALLISON;
PRUDENTIAL
TRUST CO.;
PETRIE MANU-
FACTURING CO.

Reasons for
Judgment.

1917

THE KING
v.
VASSIE & Co.;
ALLISON;
PRUDENTIAL
TRUST Co.;
PETRIE MANU-
FACTURING Co.

Reasons for
Judgment.

city in the western part of Canada, such as Quebec, Montreal, Toronto, Winnipeg, etc. These properties have for a great number of years been lying idle and unoccupied, and with the exception of the McClary Manufacturing Company, no warehouse has been erected.

Before dealing with the individual cases I may mention that in my opinion the same value per square foot does not attach to small lots as to a larger lot. Deal, for instance, with the Vassie & Co.'s lot. There is a frontage on Prince William Street of 150 feet, also a frontage on St. John or Water Street of 150 feet, with a depth of a little over 91 feet.

The Prudential Trust Co.'s property, lot No. 5, has a frontage of only 25 feet on Prince William Street, and 25 feet on St. John or Water Street. The Prudential Trust Co.'s lot, No. 3, has a frontage of 50 feet on Prince William Street and on Water Street; the Allison lot has a frontage of 50 feet on both streets—and the Petrie lot 104 feet frontage on Prince William Street and on Water Street, with a depth of practically 93 feet.

For certain classes of business the smaller lots may be all right, but for a large warehouse business as the Vassie & Company contemplate it would be essential to have the larger lot.

I mention these facts because the Crown in making their various tenders have tendered in each case at the rate of \$1.50 per square foot, treating all the lots as of the same proportionate value whether the lot in question contained a larger or a smaller frontage.

Dealing first with the case of *The King v. Vassie & Company, Limited*:

This property, as I have stated, is lot No. 1 on the plan. It has a frontage of 150 feet on Prince William Street, and also the same frontage on St. John or Water Street. The depth is about 91 feet from Prince William to St. John Street. The area of the property in question is 13,737 square feet. The expropriation plan was registered on the 7th October, 1916. The Crown tendered on the 8th March, 1917, \$20,605.50 and interest at five per cent. from the date of the filing of the expropriation plan to the date of the tender, less, however, interest on \$15,000 from the 1st August, 1917. On this date the Crown advanced on account the sum of \$15,000, which amount with interest from the 1st August, 1917, has to be deducted from the amount allowed. The Crown also tendered an additional sum of \$200 with interest to the date of the tender as compensation for certain sheds or buildings erected on the land.

The amount tendered by the Crown is practically at the rate of \$1.50 per square foot. No amount was allowed for the compulsory taking.

The defendants by their defence set up that they had carried on for years an extensive wholesale dry-goods business, and that the defendant purchased the said lands for the special purpose of building thereon a building with offices, warehouse and sample rooms, in which to carry on its said business, and that the situation of the said lands is especially adapted for the purposes of the defendant's business:

They further allege that they incurred considerable expense in having plans prepared for such of-

1917.

THE KING
v.
VASSIE & Co.;
ALLISON;
PRUDENTIAL
TRUST Co.;
PETRIE MANU-
FACTURING Co.

Reasons for
Judgment.

1917

THE KING
v.
VASSIE & Co.;
ALLISON;
PRUDENTIAL
TRUST Co.;
PETRIE MANU-
FACTURING Co.

Reasons for
Judgment.

fices, sample rooms and warehouse by an architect in the City of Boston; also that it would be less expensive for the defendant to carry on its business on the said lands than at the place where the said business is now carried on.

They claim the sum of \$27,474 for the lands, and \$500 for the sheds.

The first witness called for the defence was the Honourable Walter Edward Foster. He is the Vice-President and General Manager of Vassie & Company, and I may say that Mr. Foster's evidence was given in a very fair manner, in respect to the claim put forward. During the progress of his examination I asked Mr. Taylor the following question:

“Q. You claim peculiar damages. Is there any issue between you and the Crown as to the value of the land as land?”

“*Mr. Taylor*: I think so, my Lord.

“HIS LORDSHIP: The defence seems to set up special damages.

“*Mr. Taylor*: We think there are special damages. We think the land is worth at least the amount we claim, as land, apart from the special damages.

“HIS LORDSHIP: You are only claiming the value of the land apparently; you do not set up anything special.

“*Mr. Taylor*: We do not set up any special damages outside the value of the land.”

Then Mr. Taylor further states:

“We are simply claiming what we asked the Government for the land. We told the Government we would take that amount.”

I allowed Mr. Taylor to amend setting up the claim of the additional value to the defendants by reason of the adaptability of the premises for their particular purposes, and a defence was filed claiming in addition to the sums claimed by their defence the sum of \$5,000. I thought that the defendants should have the right to put forward any claims which they considered they were legally entitled to put forward, and counsel for the Crown did not oppose such application.

The defendant company purchased the land in January, 1913, for the sum of \$15,000. This purchase was from the City of St. John, who owned the land. I gather from the evidence that the city was willing to make their bargain with Mr. Foster for the sale of this particular property to them at this price of \$15,000. Probably the city would be influenced by the desirability of having a warehouse erected upon this vacant property, and while the price was \$15,000 in order to protect themselves, it being difficult to ascertain the real value, it was arranged that the property should be put up for sale at auction with this upset price of \$15,000—and after due advertisement the sale took place, and there being no other bidders, it was knocked down to the defendants at this sum of \$15,000.

I hardly think that this particular sale should be taken as the real test of its value. It is quite apparent from the evidence that other bidders were deterred from bidding by reason of the fact that they knew that the defendant company wanted the property. The evidence for instance of Mr. Bruce, a very satisfactory witness, shows these facts.

Mr. Foster, in his evidence, points out the parti-

1917

THE KING
v.
VASSIE & Co.;
ALLISON;
PRUDENTIAL
TRUST Co.;
PETRIE MANU-
FACTURING Co.

Reasons for
Judgment.

1917

THE KING
v.
VASSIE & Co.;
ALLISON;
PRUDENTIAL
TRUST Co.;
PETRIE MANU-
FACTURING Co.

Reasons for
Judgment.

cular value of this property for the purposes of their business. There is no doubt that the defendant company intended to erect a large warehouse building on this particular piece of property. Plans were prepared for the erection of the buildings by an architect in Boston. These plans are filed as an exhibit in the case. Delays took place, as explained by Mr. Foster, when the breaking out of the war on the 4th August, 1914, changed the whole aspect of affairs. The defendants prudently abandoned for the time the idea of erecting new buildings, not knowing what effect the war might have upon their business; and, I rather gather from what Mr. Foster states, that they probably have not reconsidered the question of building, and in the meantime on the date mentioned the expropriation plan was filed.

Mr. Foster states that, in his opinion, the property has not risen in the market since 1913. I asked him this question:

“Q. You bought these lands in 1913? A. Yes.

“Q. Has that property risen in the market since “1913? A. No, sir, I would not say so.”

Further on I asked him this question:

“Q. The real question is, as between 1913 and “1916, has the property risen in value? A. I would “not say that it has.”

—And he goes on to point out that the market value could not be obtained.

I think from the evidence of Mr. Thorne and Mr. Bruce and other witnesses, that there was a considerable improvement in the value of property between the date of the purchase in January, 1913, and the fall of 1916, when the expropriation plan was filed. There had been considerable improvement in

the City of St. John generally. The harbour was being improved, and other additional works were in contemplation.

I gather that what Mr. Foster meant was that on account of the war there would be great difficulty in selling the property,—not that property generally had not increased in value between the two dates. This I also think must be the view of those representing the Crown, because the tender in question is a very large advance upon the purchase price.

The difficulty is to get evidence of what the market value is. It appears from the Crown's evidence that some of these other lots between Block 1 and Block 8 had been acquired at the price of \$1.50 per square foot. As I have said, if intervening lots were worth \$1.50 a square foot, the value of lot 1 for the reasons I have stated is of greater value.

Mr. Foster stated that he was willing to hand it over to the Crown for what he paid with interest, pointing out, however, that five or six per cent. interest would not of course compensate him for the locking up of the capital.

It is difficult to arrive at an exact valuation of property of this nature, having regard to the fact of the effect of the war on realizing from real estate.

The amount offered by the Crown does not include anything for compulsory taking.

After the best consideration I can give to the case, I think if to the sum of \$20,805.50 there is added the sum of \$4,194.50 to cover any allowances for compulsory taking, and any other claims, such as for the plans and special adaptability of the site, a fair result will be arrived at—and I allow this amount with interest thereon from the date of the

1917.

THE KING
v.
VASSIE & Co.;
ALLISON;
PRUDENTIAL
TRUST Co.;
PETRIE MANU-
FACTURING Co.

Reasons for
Judgment.

1917
 THE KING
 v.
 VASSIE & Co.;
 ALLISON;
 PRUDENTIAL
 TRUST Co.;
 PETRIE MANU-
 FACTURING Co.
 Reasons for
 Judgment.

expropriation up to the 1st August, 1917, at which date the \$15,000 was paid on account and must be credited, and interest on the balance would run to the date of the judgment. The defendants are entitled to their costs of the action.

The King v. Allison.

It is needless to repeat what I have already stated in a general way. This property is No. 6, with a frontage of 50 feet on Prince William Street, and also 50 feet on St. John or Water Street. It has a depth practically of 92 feet between these two streets.

On this property there will have to be a certain amount of excavation. The date of the expropriation is the same, the 7th October, 1916. The area of the property is 4,617 square feet. The Crown tenders \$7,225.50, made up as follows: The sum of \$1.50 per square foot for the land, and an additional sum of \$300 as compensation for an easement and right of way and sewerage over an alleyway, making the total amount tendered \$7,225.50.

I think if there were added to this amount ten per cent. for compulsory taking, namely, \$722.55, the defendant will be amply compensated.

I therefore give judgment for the amount of \$7,948.05. The defendant is entitled to interest on this amount from the date of expropriation to the date of judgment. The defendant is also entitled to the costs of the action.

The King v. Prudential Trust Company.

In this case two properties are expropriated, namely, lot No. 3 and also lot No. 5. In respect to

lot No. 3 there is an annual charge of \$8 per annum payable to the City of St. John. This sum is payable in perpetuity.

I pointed out that I thought the city should be a party to the action, as their rights were expropriated as well as the rights of the Prudential Trust Co. The statement was made that an agreement had been come to whereby the city had released any rights they had in it for the sum of \$300. This, however, apparently had not been assented to by all the parties. Mr. Baxter, K.C., who is solicitor for the city, appeared in court, and agreed that the city should be added as a party defendant, and that he would file a short defence. Subsequently an agreement was arrived at in court that the sum of \$200 should be deducted from the sum to be allowed to the Prudential Trust Co., and the judgment in the case will have to direct that this \$200 should be deducted from the allowance and be paid over to the city in full of their rights in regard to this charge of \$8 per annum,—and in drawing the judgment, care must be had to the fact that the rights of the city are also expropriated.

There is also apparently a mortgage upon the property, and the mortgagee is not before the court. It is stated by counsel that there will be no difficulty in arriving at the amount payable. This mortgage should also be provided for in the formal judgment.

Lot No. 3 contains a frontage of 50 feet on Prince William Street and a similar frontage on St. John Street, with a depth practically of over 91 feet.

Lot No. 5 contains a frontage on Prince William Street, with the same frontage on St. John Street.

1917

THE KING
v.
VASSIE & Co.;
ALLISON;
PRUDENTIAL
TRUST Co.;
PETRIE MANU-
FACTURING Co.

Reasons for
Judgment.

1917

THE KING
v.
VASSIE & Co.;
ALLISON;
PRUDENTIAL
TRUST Co.;
PETRIE MANU-
FACTURING Co.

Reasons for
Judgment.

The tender of the Crown for lot No. 3, was \$6,898.50 and for lot No. 5, \$3,457.65.

I think that if to the amount tendered by the Crown there is added 10 per cent. for the compulsory taking, the defendants will be fully compensated.

I would therefore allow the sum of \$6,898.50 for the lot No. 3, less the sum of \$200, the amount payable to the City of St. John, leaving the sum of \$6,698.50, to which I would add 10 per cent., making \$7,368.35.

In regard to lot No. 5, to the sum tendered of \$3,457.65 should be added 10 per cent., namely, \$345.76, making in all the sum of \$3,803.41.

On these respective amounts interest should be added from the date of the expropriation, namely, the 7th October, 1916, to the date of judgment.

The defendants are also entitled to the costs of the action. There will be no costs to or against the City of St. John.

The King v. The Petrie Manufacturing Co., Limited.

This property is lot No. 8 on the plan. It contains a frontage on Prince William Street of about 104 feet, also the same frontage on St. John Street, with a depth of about 93 feet.

The Crown tendered the sum of \$14,526.30, together with an additional sum of \$200 for the sheds situate on the property. The defendants claim the sum of \$20,336.82 for the lands, and \$800 for the sheds.

In this case I would add to the amount tendered the sum of \$1,000. I think the size of the lot makes it of more relative value than the smaller lots. I

would also add 10 per cent. on the total amount for the compulsory taking. This will make in all the sum of \$17,298.93, to which must be added interest from the date of the expropriation, namely, the 7th October, 1916, to judgment. The defendants will also be entitled to their costs of the action.

As I undertook at the trial to do, I have gone very carefully over all the evidence in these various cases, and after the best consideration I can give to the cases and with the knowledge I have of the properties in question, I have arrived at the conclusions stated above.

Judgment accordingly.

Solicitor for plaintiff: *Daniel Mullin.*

Solicitors for defendants: *Barnhill, Ewing & Sanford.*

1917
THE KING
v.
VASSIE & Co.;
ALLISON;
PRUDENTIAL
TRUST Co.;
PETRIE MANU-
FACTURING Co.
Reasons for
Judgment.