1915
May 27.

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

PLAINTIFF,

AND

LA COMPAGNIE DES CARRIERES DE BEAUPORT, LIMITEE, A BODY CORPORATE, OF THE PROVINCE OF QUEBEC,

DEFENDANT,

AND

ALFRED ROBITAILLE,

ADDED DEFENDANT.

Expropriation—Compensation—Market value—Right to street—Title —Reversion.

For purposes of compensation lands must be assessed as of the date of the expropriation, at their market value, in respect of the best uses to which they can practically and economically be put, taking into consideration any prospective capabilities. The best criterion of the market price is the price at which property in the neighbourhood changes hands in the ordinary course of business.

2. Mere interference with a public right to travel upon a street, the person claiming compensation therefor not having the fee or any predial rights therein, is not an element of compensation.

3. A reversionary right in favour of a vendor of the land materially affects the value of the land itself as compared with land the title to which is free of any encumbrances.

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

Tried before the Honourable Mr. Justice Audette, at Quebec, May 10, 14, June 22, 1915.

J. E. Chapleau, and *A. Rivard,* K.C., for plaintiff.

E. A. D. Morgan, for defendants.

AUDETTE, J. (May 27, 1915) 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, respectively, described in the information as Block A, Block B, and Block C, were taken and expropriated under the authority of 3 Ed. VII., ch. 71, for the purposes of the National Transcontinental Railway, by depositing a plan and description of the said lands, on April 15th, 1913, with the Registrar of Deeds, in the City of Quebec, within the Registration Division in which the same are situated.

No tender was made before the institution of the action. The Crown offered $5,634.13 by the information and the defendants by their amended plea claim $39,981.45. The question of title is contested and the *onus probandi* is placed upon the defendants, who claim title to the said lands.

The following is a brief summary of the evidence adduced at trial on behalf of both parties.

On behalf of the defendants, the following witnesses were heard, viz.: Alfred Robitaille, Henry G. Matthews, Camille J. Lockwell, Charles W. Bell, Malcolm J. Mooney and George Beausoleil.

Alfred Robitaille, the president of the defendant company, and who is the predecessor in title of the defendant company for part of the lands expropriated, testified that in 1881 he erected upon part of the premises in question a vinegar factory, which was destroyed by fire a few years ago. The actual date of the fire is not in evidence. The land in question is somewhat higher and raised as compared to the south, which was looked upon as swampy and marshy, and he contends that Block C is drained by the ditches of the C. P. R. track to the north.

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He values Block A at 60 cents a square foot, as suitable for a shoe factory,—Block B, on Dumesnil Street, at 60 cents a foot, and the back part thereof at 30 cents a foot; Block C he values at $1 a foot,—as an industrial site, adjoining the C.P.R., where there is presently a railway platform.

He further claims the additional sum of 25 cents a foot upon the whole area of the land expropriated, for, as he puts it, having closed the streets to which he had a right—because he claims he had a right of way over and upon all the streets of St. Malo and that if the Crown take possession of his land, it has thereby the right to close the street—adding that the expropriated lands carried with them the right to the streets.

Henry G. Matthews, general manager of the Quebec Light, Heat & Power Co., values Blocks B and C, as manufacturing sites, at 75 cents to $1 a square foot, and Block A at half of the value placed on Blocks B and C. He says that at the end of 1911, or beginning of 1912, he was looking for a site for a tobacco factory and that he started from the C. P. R. Station to about half to three-quarters of a mile east of these premises and that he could not get land for less than $1.90 a square foot. He, however, bought at St. Malo about 3-8 of a mile southeast of this property, without any possibility of access to the railway siding in question for a car barn and paid 30 cents a foot.

Camille J. Lockwell, who is in the real estate business for five years, values Block A at 60 cents to 75 cents a foot, for private residences—for commercial and residential purposes—residences and shops. Block B he values at 60 cents to 75 cents a foot on

Dumesnil Street and at the back at 40 cents to 50 cents. Block C he values at 75 cents to $1 a foot, as an industrial site, because it has not much value for residential purposes. He places that value upon C, considering the high level of ground, the access to the railway and the railway platform. He, however, says that since 1913 he knows of no factory being established in Quebec,—adding that a number of his clients are ready to give away sites for industrial purposes. He owns Jacques Cartier Park, where lots are sold at 50 cents a foot, payable in 10 years without interest.

Charles Bell values Block C at $1, the same as his own property on St. Valier Street; Block B at 75 cents a foot for the whole block—or would ask $1 for the front on Dumont St. and 75 cents a foot for the back, and Block A he values at 75 cents a foot.

He sold in the fall of 1914 on St. Valier Street—at the place shown on the general plan filed of record—a lot of 30 x 70 feet, at $1, equal to $2,100. However, the witness did not care to disclose the name of the purchaser, who happened to be one of his relatives. The deed, he says, has not as yet been passed, but the money passed.

Malcolm J. Mooney, who is in the real estate business since 1911, values Block C at $1 a foot, thinking it would be worth that for manufacturing purposes, —it would be suited for a railway station. He values Block A at 65 cents to 66 cents as suitable for small factory; Block B, on Dumesnil Street, he values at 65 cents to 66 cents and the back at 30 cents to 33 cents. The lots at Vandyke,—situate to the northeast of the property in question, are selling at $500 to $700 a lot of 30 x 80,—10 per cent. cash and the balance at so much a month for 8 years, and some,

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the shortest, for a period of 5 years. He says he would not care to put a price on the land in question as building lots; they would be very cheap, about 25 cents a foot,—it would be difficult to handle them as building lots.

George Beausoleil was assessor for the City of Montreal for 5 years and for the last 2 years is a member of the firm of Beausoleil Limited, real estate brokers, in Montreal.

He values Block C at $1 a foot, taking into consideration the advantage of the high level of the land, the platform and the ditches of the C. P. R. draining the land. And he bases his valuation upon the value of industrial sites at Montreal,—adding that in the City of Montreal these lands would be worth more, but he compares them with land similarly situated in the Banlieue. The Block C is well adapted for industrial purposes, but a larger depth would be desirable. He values Block A at 50 cents to 60 cents a foot. It would be suitable as industrial site, for a shoe factory, but it would have to be 5 storeys high. Not large enough for a biscuit factory. He values Block B at 50 cents a foot, as a reasonable valuation.

He compares the value of the premises in question to the Turcot Village, Coté St. Paul, Montreal, where there is a large block of land; part of it is marshy and part raised. The former part is selling at 30 cents and the latter at $1. However, he added, no sale took place at $1; it is 90 cents which is asked. They have waterworks and Turcot Village forms part of Montreal since two or three years ago.

Speaking of Block C, on cross-examination, he says it is difficult to establish the value of this property, it depends upon the use one wants to make of

it. It is adjoining the C. P. R. and that is why I gave it a higher value. He looks upon values in the Banlieue of Montreal as the same as Quebec. He admits he does not know the value of property in Quebec and its surroundings and has no personal knowledge of any sales at Quebec in 1912, 1913 and 1914,—nor does he know anything during these years respecting the starting or closing down of factories in Quebec.

This closes the defendant's evidence.

On behalf of the Crown the following witnesses were heard, viz.: Joseph J. Couture, Eugene Lamontagne and Joseph Savard.

Joseph J. Couture, a notary public with a large experience to his credit and who is familiar with the sales of property in the neighbourhood, values Block A at 15 cents a foot; Block B at 15 cents on Dumesnil Street and 12 cents on the south, and Block C he values at 15 cents.

He compares the value of the lands in question to those on Park St. Valier, situated quite close, to the northwest of the C. P. R. track and which are also bounded on the east by Lesage Street, and says that in Park St. Valier lots of 2,040 feet are selling at $600—that is, at $1 weekly, without interest. He cites lots 1 and 2, corner Deslaurier and Lesage Streets, where two lots of 3,960 feet were sold on June 16th, 1913 for $1,400, at $1 weekly, without interest. This sale is made at $700 a lot, of which $355.03 represent the interest and the capital is represented by the sum of $344.97—showing the sale at 17¼ to 17½ cents a square foot, and he considers these two lots better situated than the lands expropriated, because they are on Lesage Street, to the north of the C. P. R. track, carrying with it the ad-

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vantage to go to St. Valier Street—the principal commercial street in St. Roch—without crossing the railway track. They also have the waterworks and sewers. Lots of 2,040 feet, at other places on St. Valier Park, are also sold at $400, $350 and $300. In a $600 lot the interest is represented at $322.24, under weekly payments. The land expropriated is subdivided into building lots and he has valued them as such,—and Block C is too small to be used for a factory; it is disadvantageous for that purpose and he does not believe it could be sold as such. From 1910 to April, 1913, there has been no demand for factory sites; the last factory establishment was the steel works, between Deslaurier Street and the C. P. R. From Exhibit 4 it will be seen that, on April 9th, 1912, Perodeau sold to the Transcontinental Railway a large piece of land, to the south, immediately adjoining the land expropriated and of which they formerly formed part, at $1,000 an acre, or about 3½ cents a square foot. The whole of the lands taken could not be used for industrial purposes, on account of the streets which separate the several blocks from one another.

Eugene Lamontagne, real estate at Quebec, is the owner of two parks: Park St. Valier and Domaine Lairet. He is interested in four real estate companies, of which he is manager: one owns lands at Charlesbourg, outside the city limits; another on Ste. Foye Road, called "Park Quebec," another called Park St. Malo and the fourth one at Regina, Sask. He sold, in the name of Delaney (Exhibit 5) to the Transcontinental, on April 18th, 1913, at 12½ cents a square foot, a piece of land about 2,000 feet west of the present premises and immediately to the east of the Bell Road. He began selling in the St.

Valier Park in 1908 and has almost sold every lot. Out of 140 lots, he has between 20 and 25 left. In 1913 he was selling lots on Lesage Street at $600 and $700, on weekly payments of $1 without interest, which would represent between 28 to 30 cents a square foot.

He values Blocks C and B, for building purposes, excepting the corners, at 15 cents a foot and the corners at 18 cents; and the piece behind, in B, he values at 10 to 12 cents a square foot. He values Block A at 15 cents and the corners at 18 cents. Even if there were a demand for factory sites, he is not ready to say the land in question would be worth more than his valuation, not even sure it would fetch as good a price. There is the Pion factory, closed since 4 or 5 years ago, containing 21,000 feet, with a 3 storey brick building, on Prince Edward Street, close to the river, the railway, and closer to the city, which could be purchased at $2 a foot,—and that price would not quite cover the building, so that the land would, at that figure, go for nothing. No purchaser has as yet been found. St. Malo Park is to the east of the Bell Road, and the reason why we sold these lots and the Delaney lot and the lots on the St. Valier Park is because people had confidence in the building of the Transcontinental shops.

Joseph Savard, assessor for the City of Quebec for the last 23 years, values Block C at 18 cents a square foot, Block B at 12 cents, and Block A at 15 cents,—stating that these prices are what is called the market prices, the price at which they can be purchased. The defendants' lands are worth 50 per cent. less than the Bell lots above referred to. If the whole of the Bell property were sold at $1 a foot, it would fetch the abnormal price of $3,525,000; taking the whole property it would be worth 2 and

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3 cents a foot. He considers that the St. Valier Park lots, on Lesage Street, are worth more than the defendant's lands. He says that Block C is too far from the centre of the city for manufacturing purposes. The Gas Works, immediately adjoining to the east, are injurious to the value of the defendants' property, and residents of that neighbourhood have already complained to him of such objection.

This closes the evidence.

Now, the lands in question must be assessed as of the date of the expropriation, at their market value, in respect of the best uses to which they can practically and economically be put, taking into consideration any prospective capabilities they may obtain in a reasonably near future. From the perusal of the evidence, it clearly appears that the witnesses of the defendants and those of the Crown are very far apart respecting their opinion as to the market value of the lands in question. Should Block C be assessed on the basis of industrial property? Witness Matthews thinks it should, because he said in 1911 or 1912 he looked for a site for a tobacco factory from the C. P. R. Station to ¾ of a mile of the property in question, and yet we have in evidence that at that tme, within that very area, the Pion property was on the market for sale. Another witness for the defendants, Lockswell, says that he knows of no factory being established in Quebec since 1913, and that a number of his clients were ready to give away for nothing sites for industrial purposes — deriving truly from such gifts value to their adjoining lands,—but all of this would go to show that the market for industrial properties was not very active and that tendency to give land under such circumstances would not go towards enhancing prices for that class of property. The wit-

ness Bell's sale upon his own property, to one of his relatives whose name he did not care to disclose, with no deed executed, but money passed, seems to be shrouded with such mystery that it cannot be used as a true test. Then witness Mooney places a high price upon the property as fit for manufacturing purposes, thinking also Block C could be sold as a railway station and that if sold under its subdivision as buildings lots it would be sold for very little, say 25 cents a foot. And finally we have witness Beausoleil who admits very frankly he does not know the value of property in Quebec and its surroundings, and that he has no personal knowledge of any sale at Quebec in 1912, 1913, or 1914. He establishes his valuation by comparing the value of the property in question to the value or prices paid in Montreal out in the Banlieue, outside of the city limits and more especially with Turcot Village, which is selling somewhat lower than his valuation of the defendants' property, and which he finally tells us is within the city limits. To use the language of Mr. Justice Idington, in the case of *Dodge v. The King*,[1] "If "opinions, regardless of knowledge, or means of "knowledge and plainly without knowledge, of a wit-"ness must be accepted as fact," then this high valuation of the defendants' witness must prevail.

How can this material conflict between the plaintiff's and the defendants' evidence be better reconciled, if not by accepting and using the prices at which properties in that neighbourhood are being sold and were being sold at the date of the expropriation? The best criterion, indeed, of the market price of these lands is the price at which property in that neighbourhood changes hands,—that is what goes to establish the true market price. The evi-

[1] 38 Can. S.C.R. 149 at 158.

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dence of witnesses Couture and Lamontagne is entirely based upon sales in the immediate neighbourhood, and their evidence must therefore be accepted in preference to opinion evidence standing by itself, resting on opinion give in the abstract, so to speak. What really establishes the market price of real property is on the one hand the offer and on the other the demand. No such demand as would enhance the value of property has been proved. Indeed, on the whole, the contrary has been established. The large area known as San Bruit, the land immediately adjoining on the south of the property in question, was sold for the Transcontinental in August, 1912, at $1,000 an arpent, which would represent about 3 24-100 cents a square foot.

After carefully considering the evidence, and after having the advantage of visiting the premises in question, accompanied by counsel for both parties, I have come to the conclusion that the prices paid for property in that neighbourhood should be used as a basis of the present assessment. That this property is worth about the same as, if not less, than the St. Valier Park property, but somewhat more than the Delaney property, near Bell Road. Therefore, a fair, reasonable and liberal compensation for these lands would be as follows, viz.:

Block A,—At 18 cents a foot.....$1,113.66

Block B,—The front part, on Dumesnil Street, 16,125 feet at 18 cents $2,902.50

And the balance of the Block, to the south, 13,975 feet, at 15 cents 2,096.25

$4,998.75

Block C,—At 20 cents a foot, valuing it a little higher, taking into consideration that the siding and the platform might make its purchase more attractive for certain purposes	2,132.80
	$8,245.21
To which should be added 10 per cent. for compulsory taking—the evidence showing indeed in this case that the defendants were unwilling to part with their property	824.52
	$9,069.73

Better lots, indeed, than on A, B and C are being sold at St. Valier Park, on Lesage Street, at 17½ cents. And why should Block C have that high value claimed by some of the defendants' witnesses, when some of them even say that if it is sold as building lots, it will go very cheap, and then the land is too narrow at the western end to be economically and practically used with advantage for a factory. Even if there were a demand for industrial purposes and that C could be sold as such, one of the witnesses says he is not sure that it would fetch, on that basis, as good a price as that he valued it at for building and commercial purposes, that is, for dwellings and shops.

The defendants further claim the additional sum of 25 cents a square foot, upon the whole area of the land expropriated, because the Crown closed the streets to which they had a right, claiming further they had a right of way over and upon all the streets of St. Malo, and that if the Crown takes possession

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of their land, it has thereby the right to close the streets, adding that the expropriated lands carried with them the right to the streets.

This is a somewhat extraordinary proposition. The defendants' lands were formerly part of that large subdivided area known in Quebec as Sans Bruit,—a subdivision made a great many years ago. When the owners of Sans Bruit subdivided this property they allotted a part for streets and a part for lots. In arriving at the price for such lots they must have included in the same the value of the streets opposite the lots,—because they were getting no ear-mark value or consideration for them from the purchasers of these lots. What the owners of Sans Bruit did, indeed, was to dedicate these streets to the public, and when the defendants, or their *auteurs,* acquired their property, such dedication to the public had been made for already a number of years. If anyone could, consistently with the circumstances, have any claim upon such streets it would be the defendants' vendors; but neither the vendors nor the purchasers of these lands have any right therein. In *Myrand v. Légaré,*[1] Sir A. A. Dorion, C.J., says: "Une propriété privée peut devenir "propriété publique, lorsqu'elle est déclarée telle "par une autorité compétente ou encore par la dédi- "cation que le propriétaire en fait pour l'usage du "public. Un chemin ou une route peuvent être "établis par un procès-verbal ou autre acte émanant "des autorités municipales, (autrefois des officiers "de voiries) conformément aux dispositions de la loi, "ou ils peuvent l'être par tout acte du propriétaire "indiquant clairement son intention de le céder au "public. Ainsi lorsqu' un propriétaire ouvre sur

[1] 6 Q.L.R. 120 et seq.

"sa propriété une rue ou une place publique et qu'-
"il y concéde des terrains en les désignant comme
"attenant à telle rue ou place publique, sans aucune
"réserve de son droit de propriété, il n'y a aucun
"doute, que par l'usage que le public en fait, cette
"rue ou place publique ne devienne propriété pub-
"lique, a l'usage non seulement de ceux qui y ont ac-
"quis des terrains riverains, mais a l'égard de tous
"ceux qui peuvent avoir a y passer, c'est-a-dire, a
"l'egard du public en général. Cet effet ne résulte
"pas de la convention faite avec les acquéreurs des
"terrains cédés, car alors il n'y aurait qu'eux et
"leurs ayant-cause qui pourraient exiger l'accom-
"plissement des conventions portées dans leurs
"contrats, ni de la prescription qui acquiert toujours
"une possession pendant une période détérminee
"par la loi, pour qu'elle puisse conférer un droit
"quelconque; ce qui imprime ce caractére de rue
"ou de place publique au terrain indiqué comme tel
"par le propriétaire, c'est la dédication ou l'aban-
"don qu'il en a fait au public par une déclaration
"expresse et qui recoit son exécution par l'ouver-
"ture de telle rue ou place à l'usage du public.

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"Il n'est pas meme necessaire que cette dedication
"soit faite par ecrit; il suffit que les circonstances
"soient telles, qu'elles indiquent clairement que
" 'intention du proprietaire a ete de faire un aban-
"don de son terrain au public, pour qu'il ne puisse
"plus s'opposer a ce que le public s'en serve con-
"formement a sa destination.

"Les auteurs reconnaissent du reste que le public
"peut, comme un particulier, acquierir par la pre-
"scription la propriete d'un chemin. En effet si

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"un particulier acquiert, pa trente ans de posses-
"sion exclusive, la propriete, d'un terrain qui ap-
"partient a autrui, on ne voit pas pourquoi la pos-
"session non interrompue du public, pendant trente
"ans, ne lui ferait pas egalement acquerir la pro-
"priete d'un chemin, d'une rue ou d'une place pub-
lique."

See also *Guy v. City of Montreal*,[1] *Bourget v. The Queen*,[2] and *Jones v. Township of Tuckersmith*.[3]

At the date of the expropriation these streets were by dedication vested in the public, the defendants having neither fee nor predial rights of any kind therein, but merely enjoying in common with others of the public, the privilege of travelling upon the same and nothing more. Therefore, the right alleged to be interfered with must be found to be a right common to the public generally and for which an individual, affected by such interference, even in a greater degree than that sustained by other subjects of the Crown, is not entitled to any compensation. *Archibald v. The Queen*;[4] *The King v. MacArthur*.[5]

As already intimated, the Crown does not admit the defendants' title to the lands in question, and the defendants, by their counsel, contend they own the same, thereby taking upon themselves the burden of proof in that respect.

It having been found, in the course of the trial, that Alfred Robitaille, the auteur of the defendant company, still retained the ownership of some por-

[1] 25 L. C. J. 132.
[2] 2 Can. Ex. 1.
[3] 23 D.L.R. 569, 8 O.W.N. 344.
[4] 3 Can. Ex. 251; 23 Can. S. C. R. 147.
[5] 34 Can. S. C. R. 570.

tions of the lands expropriated, he was, by order of this court, made a party to this action and appeared represented by counsel. Having been made a party to this suit he filed of record, under the joint signature of his counsel and his own, a declaration reciting among other things that such of the lands expropriated, which at the date of the expropriation, appeared to belong to him really belong to the defendant company, and that the compensation money belongs to the said company, thereby further assigning to them all his right or claim thereto. That cured part of the title to a certain number of lots, leaving without any title lot 54, being a lane on Block B, including also No. 751.

Then there is also some doubt as to lots 55a, 55b, and 55c, there being no title to such lots under that description; but there is title to parts of lot 55, of which 55a, 55b and 55c are parts. Under Exhibit J, in 1881, "part of lot 55" was sold to Alfred Robitaille and Edouard Robitaille, who in turn, in 1882 (Exhibit G), sold the same with covenant to Patrick Lynott. And Patrick Lynott, in 1888 (Exhibit J), assigned and transferred a number of lots and both in items 1 and 4 of the said deed "parts of 55" come into the hands of the defendants. I think it may reasonably be inferred that under this description of parts of 55, these lots 55a, 55b and 55c passed to the defendants.

There is further upon lot No. 55 a mortgage by L. N. Carrier in favour of James Machider, the amount of a judgment for $402.01, with interest and costs, as mentioned in the registrar's certificate, together with a further hypothec on one undivided twentieth of lot 54, the lot for which no title has been shown.

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Then there is this further matter which has not been mentioned at the trial and which became known to this court only upon reading the chain of title and it is this. Under both Exhibits E and F, Alfred Robitaille, in 1898, purchased the lots therein mentioned, but did not pay the capital or purchase price of $450 and $300 respectively; but this capital remained in the hands of the vendors, subject to an annual rent until the payment of the capital of the rent. It is not in evidence whether or not the capital has been paid. If it is not paid, such capital should be paid out of the compensation money hereby fixed.

Furthermore, the sale to Alfred Robitaille and Edouard Robitaille, in 1881 (Exhibit I), is made subject, *inter alia,* to their erecting and operating upon the premises, within 6 months from the date of sale, a vinegar factory. And it is further equally covenanted thereby that in case the building ceased to be employed as a shop or factory, as well also in case they would be destroyed either through old age or otherwise, that the said lands would revert *de plein droit* to the vendors. When did the fire destroying the building take place, and had the failing to be rebuilt in the 6 months first assigned the effect to revert the property to the vendors?

These are all matters that were not mentioned or raised at the trial and upon which the court would think advisable to hear counsel before finally pronouncing upon the same. Indeed, the question of reversion of the property under certain circumstances should have been made known to the witnesses before they placed any value upon this property; because the nature of such a title goes to the value of the land itself and tends to decrease its

value as compared with land held under a fee free from any flaw or *alea* of any kind.

On March 15th, 1915, the sum of $4,500 was paid by the plaintiff to the defendant company on account of the compensation money herein.

Therefore, there will be judgment as follows:

1st. The lands expropriated herein are declared vested in the Crown from the date of the expropriation.

2nd. The compensation for the lands expropriated and for all damages resulting from such expropriation is hereby fixed at the sum of $9,069.73, with interest thereon from April 15th, 1913.

3rd. The defendants, upon their joint signatures, are entitled to be paid, such part of the established compensation as will remain as a balance, after deducting therefrom the said sum of $4,500, plus the value represented by lot 54, including No. 751, for which no title has been shown, unless, however, the defendants succeed in proving title, as hereinafter mentioned, the whole upon giving to the Crown a good legal and sufficient title, free from all encumbrances whatsoever, and more especially upon releasing and freeing, 1st, the mortgage on lot 55; 2nd, the mortgages or hypothec of *bailleur de fonds* under Exhibits E and F; 3rd, upon satisfying the Crown respecting the clauses of their title creating reversion under the circumstances therein mentioned; and 4th, upon releasing the mortgage on lot 54, in case only the defendants establish title thereto.

And failing the defendants to be able to give such title free from all encumbrances to the satisfaction of the Crown, and failing the parties to be able to

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adjust among themselves this question of title, leave is hereby reserved to either party, upon giving 10 days' notice to the other, to again bring the matter before this court for further adjudication upon the question of title, with leave to hear any further evidence that may throw light upon the matter and to be heard upon the whole question of title, but of title alone, the question of the assessment of the compensation money having been already finally settled so far as this court is concerned.

5th, the defendants will be entitled to their costs.

Judgment accordingly.

Solicitors for plaintiff: *Chapleau & Morin.*

Solicitors for defendants: *Morgan & Lavery.*