

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

1916
Feb. 2.

PLAINTIFF,

AND

HALBERTRAM HECTOR BRADBURN AND
JOHN TAYLOR WEBB,

DEFENDANTS.

Expropriation—Compensation—Water lots—Valuation—Advantages—Set-off.

In estimating the amount of compensation upon the expropriation of water lots by the Crown for harbour improvement purposes, regard will be had to the local market value of the land, its state of improvement respecting water frontage, and the advantage and benefit accrued to the owners as a result of the undertakings, the latter of which, under sec. 50 of the *Exchequer Court Act*, must be considered by way of set-off.

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

Tried before the Honourable Mr. Justice Audette,
at Fort William, Ont., February 1, 2, 1916.

F. R. Morris, for plaintiff.

H. W. White, K.C., for defendants.

AUDETTE, J. (February 2, 1916) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that certain lands, belonging to the defendants, were, under the provisions of the *Expropriation Act*, taken and expropriated for the purposes of a public work of Canada, namely, the improvements and enlargement of the harbour of Fort William, in the

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Province of Ontario, by depositing, on September 16th, 1913, plans and descriptions of the lands so expropriated in the office of the Local Master of Titles in and for the District of Thunder Bay, Ontario, in which district the lands are situate.

Two pieces or parcels of land were so expropriated. One being part of Lot 7, Concession E, Island No. 1, of the City of Fort William, and containing by admeasurement one and twelve one-hundredths (1.12) acres.

The second piece or parcel of land so expropriated is Lot No. 6, Concession E, Island No. 1, of the said City of Fort William, and containing by admeasurement two and thirty-four one-hundredths (2.34) acres.

The Crown, by the information, offers the sum of \$3,360 in respect of Lot No. 7, and the sum of \$7,020 with respect to Lot No. 6, making in all the sum of \$10,380.

Together with the said sum of \$10,380, the Crown further undertakes and consents that the defendants and their successors in title be at liberty to construct, maintain and use, upon the space of 25 feet lying between the line of expropriation and the harbour line, owned by the plaintiff, such wharves, docks or piers as they may desire.

The Crown further undertakes to dredge to the harbour line, and in the event of docks or other structures being so built to the harbour line, to dredge forthwith clear of such docks or other structures as to enable vessels to approach to and along the same. The whole as more specially described and set forth in paragraphs 5 and 6 of the said information.

The defendants at bar contend that the amounts offered by the Crown, in the manner above set forth, are not sufficient, and claim the sum of \$65,000.

The defendants' title is admitted.

The several questions of law respecting the road allowance, the right of the riparian owners on a navigable river, have already been passed upon, in the case between the same parties, namely, in the case of *The King v. Bradburn*,¹ and do not come up for decision in the present issues. The only question to be now decided is one of the *quantum* of the compensation to be paid with respect to the lands taken and the damages, if any, resulting from the expropriation.

Dealing first with Lot No. 6, it may be said; that taking into consideration the condition of the real estate market at Fort William at the date of the expropriation,—the unimproved condition of the lot respecting water frontage and without any water front on account of the road allowance, and further the material advantage derived from the two undertakings above mentioned, I have come to the conclusion that the offer, at the rate of \$3,000 an acre, for the said Lot 6, is over and above the actual market value of the same,—and specially so indeed if full effect is given to sec. 50 of the *Exchequer Court Act*, whereby the advantage and benefit accrued to the owners of the property from the undertakings must be taken into account, and consideration given to it by way of set-off. Therefore, the amount of \$7,020 offered by the Crown for the 2.34 acres expropriated with respect to Lot No. 6, is declared sufficient and adequate in respect of the land taken

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¹ 14 Can. Ex. 419.

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and for all damages resulting from the expropriation of the same.

Coming to Lot. No. 7, for which the Crown has also offered a compensation at the similar rate of \$3,000, inclusive of all damages, I must say that if Lot. No. 6 is worth \$3,000 an acre, Lot No. 7 must necessarily be worth more, as it had already been improved by the dockage and frontage improvements given by previous expropriations, and furthermore, it has been damaged by the manner in which the 1.12 acres have been carved out of the same, although the increased frontage given by the present expropriation must not be lost sight of. The plaintiff has taken a piece of land of irregular shape, at the expense of the frontage on the Kaministiquia River.

Therefore, taking into consideration the irregular shape of the piece taken on No. 7, the advanced value derived by the defendants from the improved piece fronting on the McKellar River, with the above mentioned undertakings and the state of the market at the date of the expropriation, I have come to the conclusion that this piece should be assessed on a basis of \$5,000—thus allowing a compensation that is ample and liberal under the circumstances. The sum of \$5,600 will be allowed for the 1.12 acres expropriated and taken from Lot No. 7.

Therefore, there will be judgment as follows, to wit:

1st. The lands expropriated herein are declared vested in the Crown from the date of the expropriation, namely, the 16th day of September, 1913.

2nd. The compensation for the lands expropriated herein is hereby fixed at the total sum of \$12,620, with interest thereon at the rate of 5% from the 16th

September, 1913, to the date hereof. The whole in full satisfaction for the land taken and all damages whatsoever, resulting from the said expropriation.

3rd. The defendants are entitled to be paid, by the said plaintiff, the said sum of \$12,620, with interest thereon, as above mentioned—upon giving to the Crown a good and sufficient title, free from all mortgages and encumbrances whatsoever.

4th. The defendants are also entitled to the rights, powers and privileges conferred upon them and their successors in title by the two undertakings mentioned in the information herein.

5th. The defendants are further entitled to the costs of the action.

Judgment accordingly.

Solicitors for plaintiff: *Morris & Babe.*

Solicitors for defendants: *Whitla, Bury & McCormick.*

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