1916
April 22.

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

PLAINTIFF,

AND

ARTHUR PICARD, HONORINE MORAUD, WIFE OF EDMUND R. ALLEYN, AND THE SAID EDMUND R. ALLEYN, TO AUTHORIZE HIS SAID WIFE AND DAME PHILLA LEE,

DEFENDANTS.

Expropriation—Basis of compensation—Value of land—Speculative purchase—10% allowance.

In assessing compensation for property taken under compulsory powers, it is not proper to treat the value to the owner of the land and rights, as a proportional part, the value of the realized undertaking proposed to be carried out. The proper basis of compensation is the amount for which the property could have been sold had the proposed undertaking by the Crown not been in existence, with the possibility that the Crown or some other person might obtain those powers. The price the property brought from purchasers speculating upon the expropriation affords no proper mode for arriving at its market value, and having been acquired for such speculative purposes the usual 10% allowance for the compulsory taking will be refused.

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

Tried before the Honourable Mr. Justice Audette, at Quebec, December 20, 21, 1915.

Geo. F. Gibsone, K.C., and *A. C. Dobell*, for plaintiff.

Louis S. St. Laurent, K.C., and *A. Baillargeon*, for defendant Picard.

Lucian Moraud, for other defendants.

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AUDETTE, J. (April 22, 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 defendant Picard, were taken and expropriated, under the authority of 3 Ed. VII., ch. 71, for the purposes of the National Transcontinental Railway, a public work of Canada, by depositing a plan and description of the same, on November 8th, 1913, with the Registrar of Deeds of the Registration Division of Quebec.

The Crown, by the information, offers the sum of $4,589.55 for the land so expropriated, and for all damages resulting from the said expropriation, and defendant Picard, by his plea, claims the sum of $28,200.

The hypothecary-creditors, Moraud, Alleyn and Lee, appeared by attorney and filed of record a declaration whereby they admit having been served with the information and declare to leave the matter in the hands of the Court.

The total area of the land expropriated is 5,367 feet.

This property is situate on Champlain Street, in the City of Quebec, and extends at the back to low water mark, as conceded by the Crown's counsel. The Crown has expropriated from this property the right-of-way for the National Transcontinental Railway, taking all the land, belonging to the defendant, on the river side from the north line of the said right-of-way,—thus leaving the defendant with a certain piece of land on the northern side of the said right-of-way to Champlain Street, and upon the piece of land so left to the defendant, there is a dwelling house with a small yard at the back.

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Under a previous expropriation of the whole property herein,—including the dwelling house and the land up to Champlain Street, of January 20th, 1911, as appears by a copy of the information filed herein as (Exhibit A),—the Crown had offered the sum of $16,411.48. By reference to that record, it appears the defendant Christie (Mrs. Howe) had accepted that amount by her plea of November 4th, 1911. However, that plea has been subsequently amended by substituting a new one filed on November 29th, 1911, whereby the amount of $16,411.48 offered by the said information is refused and a claim for the sum of $36,324.50 made in respect of the same. That case was finally discontinued on March 20th, 1912.

However, on December 13th, 1911, while the whole property was thus expropriated and before the Crown abandoned the said expropriation, under the provisions of sec. 23 of the *Expropriation Act,* and before the discontinuance of the first case in respect thereto, the defendant in the first case, Elizabeth Christie (Mrs. Howe), sold her property and assigned all her rights to and interest in the compensation moneys to J. T. Donohue. The latter, heard as a witness, testified he paid as consideration for the said sale or assignment, the sum of $16,411.48 to Reverend Father Wood, acting on behalf of the St. Bridget Asylum, to whom the said Mrs. Howe had assigned her rights, in the manner mentioned in the evidence. And it is well to add that Reverend Father Wood, heard as a witness, recognizes having so received the said moneys. A conveyance of this kind, while the property was expropriated, did not pass the fee at that time, but the assignment to the compensation moneys was good and valid.

Subsequently thereto the said Donohue appears to have sold to the present defendant Picard, the whole of the said property for the sum of $18,000, as appears by the deed filed herein as (Exhibit B). The defendant Picard frankly admits in his evidence that when he bought, it was not with the intention of occupying the property, but that it was absolutely a speculation, with the idea of making more later on. Witness Donohue also admits he bought to speculate, and it must be conceded there is nothing wrong in speculating; but the market price of property and its speculative price may be very different.

Be all this as it may, I cannot refrain mentioning that while my opinion is that all the facts disclosed by the evidence are true,—that all the witnesses heard in respect of this transaction, told the truth, I am inclined to believe I have not the whole truth. In other words, I feel satisfied I have not the whole history of this transaction. I have had some hesitation as to whether or not I should not re-open the case to hear further evidence,—but after mature deliberation, I have come to the conclusion that perhaps with additional evidence, I would not then be in a better position than I am now to do justice between the parties, and I have abandoned the idea.

It is, indeed, in a case of this kind, quite difficult to arrive at a satisfactory amount as representing the market value of the land in question herein, in view of the fact that at the date of the expropriation there was practically no market for all these water front properties, in the neighbourhood,—notwithstanding these transactions by witnesses Donohue and Picard made with the object of speculating upon the expropriation.

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The only revenue derived from the property was from the dwelling houses which at the date of purchase by the defendant Picard had seven different tenants, honourable and respectable tenants, but of the labouring class, as a property in that locality would obviously call for and command, and calling for small rents. Notwithstanding the large claim made for the damages resulting from the expropriation, from the fact that the railway passes at the back of the property,—the defendant Picard tells us that the revenue derived from the house has not varied in 1912, 1913, 1914 and 1915.

There is a small wharf on the property, running practically to low water mark, but there is not a tittle of evidence showing that there was ever any revenue derived from the same, or whether or not, it was not only used as a yard, together with all rights attached to a riparian owner under similar circumstances.

The property at the date of the expropriation was used as a residential proposition, and the house was occupied by tenants, and that was the only apparent revenue it did yield as such. There is, however, some evidence and much argument as to the future potentialities of this property, as forming part of the harbour of Quebec, in course of development. But in that respect, it is now clearly settled that in assessing compensation for property taken under compulsory powers, that it is not proper to treat the value to the owners of the land and rights, as a proportional part of the value of the realized undertaking proposed to be carried out; and the proper basis for compensation is the amount for which such land and rights could have been sold had the present scheme carried on by the Crown not been

in existence,—but with the possibility that the Crown or some company or person might obtain those or such powers. The *Cedar Rapids* Case.[1] And is there any competition in a case of this kind? Would these works be done by anybody else but the Crown?

In approaching these considerations, it is well to bear in mind that I am not using the transactions made by Donohue and Picard as a proper mode of arriving at the market value of this property; because they were obviously made with the open purpose of speculating upon the expropriation, to the detriment of the public interest. The matter becomes self-evident, when it is considered that the defendant is now claiming by his plea the sum of $28,200, and that he openly and frankly admits in his evidence that he bought for the purpose of speculation, a purpose which is not in itself wrong, but a speculative price, boosted up upon imaginary schemes or reasons, does not always establish the market value of a property.

Then it is said the Crown, by the original information under case No. 2152, offered the sum of $16,411.48 for the whole property and has thus to a certain extent established the market price of the property.

Accepting that view, the whole question of compensation would then resume itself into finding what is the value of what remains of this property after the expropriation of 1913,—since we have the value agreed upon before the expropriation. Considering, therefore, that the whole of the dwelling house, with a small yard, remains intact, and that the only revenue derived from this property at the date of

[1] [1914] A.C. 569, 16 D.L.R. 168.

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the expropriation, was from the dwelling, it will obviously appear that the sum of $28,200 claimed by the defendant is not only excessive, but is extravagant.

There can be no objection to the taking of the view to a certain extent and to consider that the valuations made by witnesses Giroux and Tanguay in 1911 was right and acceptable to the defendant. If these valuators are declared fair and just and properly enlightened in 1911 in fixing the value of this property,—why cannot their judgment be also accepted at the date of the 1913 valuation? Their competency would appear to be equally good in 1913 as it was in 1911. Is such competency divisible? If the valuation of 1911 is accepted, why not accept that of 1913, which is by them fixed at $7,207.31? That would have been the end of the present controversy.

On the other hand, is the optimistic valuation of $3 or $3.52 a foot to be accepted, bringing the value of this property up to over $40,000. Undoubtedly, in taking this view, the witnesses must have been looking through a magnifying glass at Quebec, that will some day be, but at too far a distance, with too remote capabilities to be presently taken into consideration, and be coupled with the true market value of this property in 1913. And, indeed, why would the Crown be now charged with the enhanced value that the present work it is now carrying on in the harbour of Quebec would some day, in an uncertain distant future, give to these properties in the harbour.

And as is so well said, by Rowlatt, J., in *Sidney v. North Eastern Railway Co.*[1]: "Now, if and so

[1] [1914] 3 K.B. 629 at 637.

"long as there are several competitors, including "the actual taker, who may be regarded as possibly "in the market for purposes such as those of the "scheme, the possibility of their offering for the "land is an element of value in no respect differing "from that afforded by the possibility of offers for "it for other purposes. As such it is admissible as "truly market value to the owner and not merely "value to the taker. But when the price is reached "at which all other competition must be taken to "fail, to what can any further value be attributed? "*The point has been reached when the owner is "offered more than the land* is worth to him for his "own purposes, and all that any one else would offer "him except one person, the promoter who is now, "though he was not before, freed from competi- "tion. Apart from compulsory powers, the owner "need not sell to that one, and that one would need "to make higher and yet higher offers. In respect "of what would he make them? There can be only "one answer, in respect to the value to him for his "scheme. And he is only driven to make such offers "because of the unwillingness of the owner to sell "without obtaining for himself a share in that "value. Nothing representing this can be allowed."

See also the observation of Lord Dunedin in the *Cedar Rapids Case*.[1]

In the result the only question involved in this case is that of the quantum of the compensation under the circumstances. I have had the advantage, accompanied by counsel for the respective parties, to visit and view the premises in question, and giving due consideration to the evidence and to all the circumstances of the case, I have come to the conclusion

[1] 16 D.L.R. 168, [1914] A.C. 569 at 576.

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to fix as a fair and liberal compensation the sum of $9,132.20—this amount to cover the value of the land taken, the wharf, the damages to the balance of the property remaining in the hands of the defendant, together with all riparian rights attached to such a property.

This property having been ostensibly bought for speculative purposes when it was tied up under expropriation proceedings, and upon the expectation of a further and ultimate expropriation, the usual 10% allowed in some cases for the compulsory taking will be refused. While the 10% allowance may be in certain cases allowed when one is forced out of his own premises or some such condition, the present case does not offer any of the elements operating in favour of such allowance. *The King v. MacPherson*,[1] *Cripps on Compensation*,[2] *Browne and Allan on Compensation*.[3]

Therefore, there will be judgment as follows, viz.;

1st. The lands expropriated herein are declared vested in the Crown from November 8th, 1913.

2nd. The compensation for the lands so expropriated and for all damages whatsoever arising out of or resulting from the said expropriation is hereby fixed at the sum of $9,132.20, with interest thereon from November 8th, 1913, to the date hereof.

3rd. The defendant Picard is entitled to receive from and be paid by the plaintiff, the said sum of $9,132.20, with interest as above mentioned, upon giving to the Crown a good and sufficient title, free from all hypothecs, mortgages, charges and encum-

[1] 15 Can. Ex. 215, 232, 20 D.L.R. 988.
[2] 5th Ed. 111.
[3] 2nd Ed. 97.

brances whatsoever, the whole in full satisfaction for the land taken and for all damages whatsoever resulting from the said expropriation.

4th. The defendant Picard is also entitled to the costs of the action.

*Judgment accordingly.**

Solicitors for plaintiff: *Gibsone & Dobell.*

Solicitors for defendant Picard: *Galipeault, St. Laurent, Metayer & Boisvert.*

Solicitors for other defendants: *Moraud & Savard.*

* Affirmed on appeal to Supreme Court of Canada, March 26, 1917.