HIS MAJESTY THE KING.....PLAINTIFF; 1926

AND

A. B. COLEMAN.....DEFENDANT.

Expropriation—Prospective value—Market value.

Defendant was the owner of an extensive property, near Hamilton, upon which was erected a hotel and several cottages and outbuildings. This was composed of land and water, there being 55 acres of pond and as much marsh land around the same. The buildings and about 7 acres of land on which they stood were expropriated by the Crown, for a hospital. Defendant met the question of compensation by putting forth a scheme by which he would fill in and reclaim the pond at a cost varying from $195,000 to $500,000, subdividing the same into building lots, and claimed, among other things, a large amount for damages to such lands arising out of the establishment of a hospital, by plaintiff, in that vicinity.

Held, that the owner of property is not entitled to claim as an element of its market value at the time of expropriation, some prospective value of the property remote in its character and only realizable upon the expenditure of enormous sums of money.

INFORMATION exhibited by the Attorney-General of Canada to have certain lands and buildings described in the Information and which had been expropriated, valued by the Court.

Toronto, October 26th to 30th, November 2nd to 7th, 1925.

Action now heard before the Honourable Mr. Justice Audette.

McGregor Young K.C., E. H. Cleaver and *W. A. Chisholm* for plaintiff.

W. N. Tilley K.C. and *C. F. K. Carson* for defendant.

The facts are stated in the reasons for judgment.

AUDETTE J. now this 14th of January, 1926, delivered judgment.

This is an Information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia,* that certain lands and buildings described in par. 2 of the Information and belonging to the defendant, were expropriated, on the 17th day of July, 1917, for a period of three years, for the purpose of a public work of Canada, viz., a military hospital, by depositing a plan and description of the same in the office of the Registrar of Deeds for the

1926

THE KING v. COLEMAN.

Audette J.

County or Registration Division of Halton, in the province of Ontario.

However, subsequently thereto, it having been found that the property, as described in par. 2 of the Information, was not sufficient for the purpose of the public work, and that further and additional lands were required for the purpose of that military hospital—the lands and buildings, described in par. 4 of the Information (which include all the lands and buildings described in par. 2 of the Information) and belonging to the defendant, were taken in fee, for the same purpose, by depositing on the 18th day of October, 1918, a plan and description of the same in the office of the said Registrar of Deeds.

On the 14th November, 1918, the plaintiff paid the defendant the sum of $120,000 on account of the said lands and buildings described in par. 4 thereof, but now alleges that such payment was made by mistake (par. 6 of the Information).

Therefore, the plaintiff now offers for these lands and buildings the sum of $99,393.65 in full compensation, asking that the defendant be condemned to pay back to the plaintiff the difference between $120,000 and $99,393.65, namely the sum of $20,606.35.

The defendant, by his statement in defence, claims the sum of $515,109 on account of which he has been paid the said sum of $120,000, leaving a balance of $395,109.

The only question to be determined in the present controversy is the fixing of the amount of the compensation for the said lands and buildings and damages, if any, resulting from the said expropriation.

The evidence adduced at trial is too voluminous for me to attempt to give anything like a general analysis of it, nor would such analysis serve to illustrate the grounds of my decision in any special way. I shall, therefore, confine myself to pointing out in a general way the governing facts of the case.

The property taken covers an area of 6 11/100 acres, upon which are erected the several buildings, fully described on plan No. 10, as well as upon many other plans showing the same.

I have had the advantage, accompanied by counsel for both the plaintiff and the defendant, to view the premises in question on the 2nd day of the trial.

In 1917, the defendant was the owner of a certain tract of land in the township of Nelson, in the county of Halton, and adjacent to the village of Burlington, about 10 miles from Hamilton, upon which was erected the Brant Hotel and the several cottages and outbuildings shown on the plans. The total area of such holdings at that date was about 150 acres composed of land and water—55 acres of pond and as much marsh land around the same.

The defendant met the question of compensation by the conception of a large scheme by which he would fill in and reclaim the pond at the cost varying, under the evidence, between $194,940 to something over $500,000, subdividing the same into building lots and claiming, among other items, a large amount for damages to such lots arising out of the establishment of a hospital in that vicinity.

The inflated estimate placed upon the property by this resourceful conception of a prospective value that might be thought to qualify for larger compensation under the authorities—only physically possible upon the expenditure of enormous sums of money—is not a proper basis to arrive at the market value of the property and compensation for the same; because we are seeking the value of the property as it stood on the date of the expropriation with, however, its potentiality within a reasonable but not remote future. It therefore becomes unnecessary, in the view I take of the case, to decide whether or not this scheme, which is fraught with the greatest optimism, is financially practical or not, without totally ignoring it. *The King* v. *Bélanger* (1) affirmed by the Supreme Court of Canada on the 26th May, 1921.

Whether a business man would venture into such a scheme in that locality and risk $500,000 in such an enterprise, taking into consideration the former returns of the Brant Hotel, is a question I need not further consider. The *King* v. *Carslake Hotel* (2) affirmed by the Supreme Court of Canada on the 13th June, 1916.

Incidentally it is perhaps worth quoting a specimen of the evidence showing how characteristic it is of the whole case.

(1) [1920] 19 Ex. C.R. 423. (2) [1915] 16 Ex. C.R. 24 at 31.

1926

THE KING v. COLEMAN.

Audette J.

The defendant, on the witness-stand, has given expression to these inflated values by placing upon the land taken a value of.....$154,800 00
the buildings taken 217,580 50
and the damages to the balance of his property 127,350 00

$499,730 50

These are most extraordinary figures and most unjustifiable.

One of the pitfalls of this exaggerated evidence may be found in the contestation, by the defendant, of the municipal assessment for the year 1916 at $36,000 for the whole of his property. How inconsistent with these valuations —even granting and fully recognizing that the municipal assessment does not represent the true market value of the property—yet it is always a landmark and a starting point which can hardly in this case be reconciled with a valuation of $25,000 an acre.

Another pitfall for such contention is the testimony of witness Symond whose demeanour, at trial, has convinced me that, disinterested as he was, he established most honestly and truly what took place between the defendant and himself on the 4th December, 1916, with respect to a fair price either for renting or purchasing the defendant's property described in par. 2 of the Information, when the sums of $85,000 to $100,000 were mentioned. The defendant admits part and controverts part of witness Symond's evidence; he endeavours to make of this interview as much of an anodyne as possible. However, the defendant is the most interested party in the case, while witness Symond is absolutely disinterested and is supported and borne out in his testimony by notes taken at that time which appear in pencil notation on exhibit No. 9. A yearly rental of $5,000 was at the time fixed and that covered the property described in par. 2 of the Information, including the buildings all furnished. A tentative lease was at that time prepared showing the property was to be leased at $6,000 a year for the disclosed purpose of a Convalescent Hospital and Vocational Training School. No good reason was given why the lease was not signed. It dropped; but it was dropped by the Crown and not by the defendant who kept writing to Captain

Symond, in very guarded language, expecting further news "in keeping with the conversation of the 4th December" (exhibit Z5) and Captain Symond qualifies the matter in his letter of the 20th December, as "the offer of the Hotel Brant which has been kept in abeyance," etc. (exhibit Z7) —when finally in answer to defendant's letter of the 10th January, 1917, he informs him that "the location of the Hotel Brant is not found suitable" (exhibit Z9).

The amount of the claim is so arresting as to make one feel the necessity for serious thought and question the fairness of such high and inflated valuation of half a million dollars. This is unwarranted optimism. The scheme is a by-product too remote from the chief matter. The just price is known by the common estimation of what the property is worth; it is known to some extent by the public opinion as to what it is right to give for that property under ordinary circumstances.

This property must be assessed, as it stood at the date of the expropriation, at its market value in respect of the best uses it can be put to, taking into consideration at that time any reasonable prospective capabilities or potentialities in value it may obtain within a reasonably near future.

And as said in *Cedar Rapids Co.* case (1) the value to the owner consists in all the advantages which the property possesses, present, and future; but it is the present value alone of such advantages that falls to be determined.

The price must be tested by the imaginary market value which would have ruled had the property been exposed for sale at the date of the expropriation.

Again, in *The King* v. *Trudel* (2) the Court held that the estimation of the compensation to be awarded to the owner of the property should be made according to the value of the property to such owner at the date of the expropriation.

A much abused expression made use of at trial was the term "first class" as applied to the buildings in question. They are clearly of a second class and cheaply built; the type of construction is light and depreciation serious. The site of the hotel is neither pleasing nor attractive, over-

(1) [1914] 30 T.L.R. 293 at p. 294; [1914] A.C. 569.

(2) [1913] 49 S.C.R. 501.

1926

THE KING v. COLEMAN.

Audette J.

looking this unsightly pond and marsh upon which grow weeds and vegetation of wild character. Part of the pond is used at present as a dumping ground. There is a railway passing close by at a level with the highway, thereby adding a character of undesirability and danger. There are also those electric towers carrying current at high tension voltage which add nothing to the beauty and safety of the place. All of this has a depressing effect on the value of the property. Moreover, the hotel, built in 1899, was obviously always run at a loss. Most extensive general and necessary repairs were made by the Crown to the building before occupation of the property. The Government having abandoned the use of the property late in the fall of 1923, I suggested to counsel during the trial, that by agreement, the property might be returned to the owner upon the Crown paying for the use thereof since the expropriation; but that view could not be given effect to.

Now, the value of this expropriated property must be approached as a whole as a far-seeing business man would do, without going into a quantity survey-measure of everything that goes into the buildings. *Kendall* v. *The King* (1) affirmed by Supreme Court of Canada on 29th October, 1912; *The King* v. *Carslake Hotel Co.* (*ubi supra*); *The King* v. *Manuel* (2) affirmed by Supreme Court of Canada on 29th December, 1915.

The property must be valued as it stood in 1918, but as equipped in 1917.

For the consideration to which I have adverted and from weighing the evidence carefully I have come to the conclusion to fix, as just and fair, the compensation at $140,000 for the property expropriated in 1918, to which must be added the sum of $4,876.60 as set forth in exhibit Z3 and agreed upon by both parties.

In this amount of $140,000 are included all legal elements of compensation, including damages to a certain part of the property held in unity with the part expropriated; but exclusive of the pond and marsh (which are already a detriment to the property) and also exclusive of Indian Point which was not held in unity and is too far away—such damage being of a too remote nature.

(1) [1912] 14 Ex. C.R. 71 at 83. (2) [1915] 15 Ex. C.R. 381.

This property was compulsorily taken when the hotel was a running concern and some of the cottages under lease, the owner having to move and find new quarters for himself and family, necessitating the cost of moving, etc. For all these reasons I will allow 10 per cent upon the total amount of compensation.

Recapitulating:

For the land and buildings.....	$140,000 00
For the amount of Ex. Z3.....	4,876 60
	$144,876 60
10 per cent upon same.....	14,487 66
Total	$159,364 26

The use of the property was taken in part in 1917 as above mentioned. With the view of making the award to fully cover everything I will allow the interest upon the compensation moneys to run from as far back as the date of the first expropriation; the interest upon the same between the dates of the two expropriations to represent the value of the occupation of such property by the Crown.

Therefore there will be judgment as follows, viz: * * *

Judgment accordingly.