1916
May 18.

HIS MAJESTY THE KING, on the information of the Attorney-General for the Dominion of Canada,

PLAINTIFF,

AND

WILLIAM POWER, of the City of Quebec, Merchant; DAME MARGARET ALLEYN, widow of the late Honourable John Sharples, GUSTAVUS G. STUART, K.C., and GEORGE H. THOMSON, all three in their quality of joint executors and trustees of the estate of the late Honourable John Sharples; DAME MARY VALLIERE GUNN, of Quebec, widow of the late R. Harcourt Smith, ARTHUR C. SMITH, of Quebec, bank manager, in their quality of joint executors and trustees of the estate of the late R. Harcourt Smith; THE RECTOR AND CHURCH WARDENS OF ST. PAUL'S CHURCH, QUEBEC (ANGLICAN); and THE QUEBEC HARBOUR COMMISSIONERS.

DEFENDANTS.

Expropriation—Water-lot—Quebec Harbour Act—22 Vict. (Prov. Can.) c. 32.—Interpretation—Crown Grant—Construction—Harbour Commissioners—Prior Expropriation—Offer of Compensation—Abandonment—Evidence.

In a grant from the Crown (in right of the Province of Canada) of a water-lot on the River St. Lawrence made in the year 1854, it was provided that upon giving twelve months previous notice to the grantee and paying a reasonable sum as indemnity for the ameliorations and improvements, the Crown could resume possession of the same for the purposes of public improvement.

Held, that the right of the Crown under the above mentioned provisions passed to and became vested in the Quebec Harbour Commissioners under 22 Vict. (Prov. Can.) c. 32.

Samson v. The Queen, 2 Ex. C.R. 32 considered.

2. By sec. 2 of 22 Vict. (Prov. Can.) c. 32, vesting certain Crown property in the Quebec Harbour Commissioners, it was provided that "every riparian

1916

THE KING
v.
POWER.

Argument of Counsel.

and other proprietor of a deep water pier, or any other property within the said boundaries, shall continue to use and enjoy his property and mooring berths in front thereof, as he now uses the same, until the said corporation shall have acquired the right, title and interest, which any such proprietor may lawfully have in and to any beach property or water-lot within the said boundaries, nor shall the rights of any person be abrogated or diminished by this Act in any manner whatever."

Held, that after the passage of this statute, title by adverse possession to the *ripa* subject to the above provision could not be established by a user which, so far as the evidence disclosed, was referable to the exercise of statutory rights.

Quebec Harbour Commissioners v. Roche, Q.R. 1 S.C. 365 considered and distinguished.

3. That the market value of the property in question was enhanced by the statutory rights above mentioned.

4. Where a previous expropriation had been abandoned by the Crown, the amount offered in the information then filed as compensation to the owner and accepted by him in his statement of defence, is not to be treated as conclusive of the value of the land, but may be considered along with the evidence adduced in the second expropriation proceedings.

Gibb v. The King, 52 S.C.R. 402, referred to.

THIS was an information filed by the Attorney-General for the Dominion of Canada for the expropriation of certain lands required for the construction of the National Transcontinental Railway, a public work of Canada.

The facts are stated in the reasons for judgment. January 17th, 18th and 19th, 1916.

The case was heard at Quebec, before the Honourable Mr. JUSTICE CASSELS.

G. F. Gibsone, K.C. appeared for the Crown; *A. C. Dobell* for the Harbour Commissioners; *G. G. Stuart*, K.C. for the defendants other than the Harbour Commissioners and the Rector and Church Wardens of St. Paul's Church; and *R. Campbell*, K.C for the Rector and Church Wardens of St. Paul's Church.

Mr. *Stuart:* In this case the Crown has deliberately made an offer in the shape of a previous information and tendered that as being the value. It therefore stands as a naked admission on the part of responsible

1916

THE KING v. POWER.

Argument of Counsel.

persons representing the Crown. In the defence in the previous action we accepted and said, "it is not the real value, but we are willing to accept it".

[BY THE COURT.—There is no evidence before me at all of any increase in shipping in Quebec. These properties are only of value for shipping purposes.]

That is perfectly true, and the reason of that is this, that the increase in value was to some extent due to the expectation rather than to the absolute realization at the time of this considerable increase, but that is a perfectly legitimate increase in value. If people are willing to give a large sum of money for property because they anticipate in the near future that there is going to be an advantageous and profitable use for it, that is as much market value as if it were actually at the time converted or realized.

As to the water lot, the defendants have had possession in good faith since 1901. There is an absolute prohibition under the law of Quebec against acquiring an easement, what is called a servitude by prescription. In France you can acquire an easement by prescription, but there is an article of our Code which says you cannot. There is an old maxim "Nulle servitude sans titre", which is embodied in an article of the Code. Art. 549, C. C. P. Q.

The defendants claim they have the riparian rights, because they are the owners of the ripa independent of prescription. The Crown could not grant to anybody the right to block access to the lands of the defendants.

With respect to riparian rights see *Lyons v. Fishmongers*(1), and *Pion* v. *North Shore Ry. Co.* (2).

See also *Quebec Harbour Commissioners v. Roche,*(3) and also *Montreal Harbour Commissioners v. Record Foundry & Machine Co.*(4)

(1) 1 A. C. 662.
(2) 14 A. C. 612.
(3) Q. R. 1 S. C. 365.
(4) Q. R. 38 S. C. 161.

1916

THE KING v. POWER.

Argument of Counsel.

Mr. *Dobell* contended that the Statute 22 Vict., c. 32, shows clearly that the property which had not been granted belongs to the Crown, and as there is no title to this property by grant he submitted, therefore, that the Harbour Commissioners own that piece. Mr. Power has the foreshore and the right beyond that out into the St. Lawrence. He agreed with Mr. Stuart that the Crown has not the right to put up any building or interfere with his right of egress and ingress on that particular lot. These grants were made practically for the right of building a wharf on them.

[Mr. *Stuart*.—Since the earliest days they have been granting in deep water lots, with the right to build wharves in the harbour of Quebec.]

See Articles 2213 and 2220 C.C. (P.Q.). Sec. 2 of Cap. 32, 22 Vict., vests all of these lands in the Harbour Commissioners in trust.

He contended that in the case of the *King v. Ross*(1) in relation to property at Wolfe's Cove, a very similar thing happened as in this case. Mr. Roche, who owned the Wolfe Cove property before Mr. Ross, had the property down to low-water mark. The mortgage was foreclosed and the property was brought to sale. The property was described in the Sheriff's description by the cadastral numbers of the lots. The cadastral description gave these lots out as far as the Harbour Commissioners' line, and Mr. Ross claimed that he was the owner in good faith, and had a title because of the Sheriff's sale—he had acquired out to the Harbour Commissioners' line, as that was where the cadastral gave him to.

The easement which defendants have been using and enjoying has been a general public easement. They have no rights beyond that. The only question now

(1) 15 Ex. C. R., 33.

1916

THE KING v. POWER.

Argument of Counsel.

is whether they are entltied to compensation for being deprived of the easement upon that little strip of water. He would maintain that they have not a right to such compensation. While it was a strip of water they only had a right to use it in common with the public.

Without the ripa they cannot have any riparian right.

Where there is a title and possession has been taken in virtue of that title, that possession is confined to what is expressed in that title until or unless there is some proof showing an absolute active separate possession. Now, in the present case all that Monsignor Begin intended to transfer was what he set out in the title deeds recited in the deed to Sharples, so what Sharples took possession of was what Monsignor Begin handed over to him, namely, the portions shaded in yellow on the map Exhibit No. 3, and that Sharples did not take possession of and never took possession of the intervening space.

With regard to the sum offered as conpensation on the first expropriation the Crown made a mistake, and they receded from it which was the best thing they could do. They found that by an unexplainable error on the part of some representative a very large amount of money had been offered beyond the value of the property, and they straightway set to work to withdraw the offer, and now they are taking these proceedings on a more appropriate basis as they think.

In *Yule v. The Queen*(1), a right to make a bridge had been granted before Confederation, and at the expiration of 50 years or something like that the Crown was held to have a right to take it back on paying a certain indemnity, and it was held that the right accrued to the Dominion of Canada.

(1) 30 S. C. R. 24.

1916

THE KING v. POWER.

Argument of Counsel.

[BY THE COURT.—If the public harbour was vested before Confederation, I suppose under the Confederation Act it would pass to the Dominion.]

Mr. STUART.—That was held in *Holman v. Green*(1). But the Privy Council threw so much doubt on *Holman v. Green* that it is no longer considered an authority.]

[BY THE COURT.—All the Privy Council did was this. It said it does not follow that because you have a public harbour the foreshore around that public harbour becomes part of the harbour.]

Mr. STUART.—I think they went further than that, that only such parts of the foreshore as were in actual use at that time or were appropriated as part of the harbour passed to the Dominion. This could not possibly have passed to the Dominion.

[BY THE COURT.—The question to my mind is whether this formed part of the public harbour. That is, the line of the public harbour having been thrown out into the St. Lawrence, and this being within the line which would be granted, the question is whether it passed to the Dominion or to the Province?]

I think it is clearly inside the limits laid down by the statute. It is right out in the middle of the river, it is some considerable distance beyond low water.

In 1842 the Commissioner of Crown Lands instructed a surveyor, Mr. Ware, to take into consideration the different circumstances and to advise the government to what extent out into deep water grants from the Crown should be limited. This surveyor made a plan at the time in 1842, and that plan was subsequently approved in the year 1852 or 1853, by the Commissioner of Crown Lands, the Commissioner of

(1) 6 S. C. R. 707.

1916

THE KING v. POWER.

Argument of Counsel.

Crown Lands thereby deciding by way of order in council, I believe, that no grants of beach or deep water lots in the Harbour of Quebec should extend beyond this line. That is what the state of affairs was and has been ever since. It was the establishment of the Harbour Commissioners' line, so called. It was not always called by that name—it used to be called the "Blue line," the line of blue water.

Subsequent to that, in 1859, the statute was passed which has been recited to the Court. It declares the Harbour of Quebec to be bounded by the high water mark on both sides of the river and on the east side by the line of the Montmorency River and Indian Cove, and on the west side by a line from Cap Rouge to the Chaudiere. So the harbour is equivalent to the high-water mark on one side and the other, and the so-called Harbour Commissioners' line does not in any way affect the boundaries of the Harbour of Quebec. It was a line laid down purely for administration purposes in the Crown Lands Department, and to cover the extent to which grants in deep water might be made by the Crown to individuals.

The only point I wish to make from the *Fisheries* case is that the holding of the Privy Council was, I think, that "Public Harbour" within the meaning of the *B.N.A. Act*, is to include everything that may properly be included in the term "public harbour" depending upon the circumstances of the case.

On the question of limited ownership see *Corrie v. MacDermott*, (1).

Mr. *Stuart*, in reply:—What is the effect of the reservation in favour of the Crown in the patent of 1854? Two questions arise there. First of all, in whose favor, that is, in favour of the Crown *qua*

(1) (1914) A. C. 1056.

Dominion or *qua* Province, is that reservation effective now if effective at all? Secondly, has the Crown taken the proper steps under the patent to avail itself of the stipulation, if it belonged to the Dominion at all? It can only belong to the Dominion if it forms part of the public harbour.

[BY THE COURT:—Assuming the harbour as defined by the first statute embraced these lands, and that was the position of matters at the time of Confederation, would not the *British North America Act* vest the harbour as it existed at the time of Confederation in the Dominion?]

Insofar as any lands ungranted were concerned, but not insofar as any lands vested in anybody else were concerned. The effect of the Act was not to vest in the United Province of Canada any properties which had been previously granted to private persons. On the contrary there is an express provisio that these rights were reserved.

[BY THE COURT:—Then does that statute exclude these particular lands from the boundaries of the harbour as defined?]

While it leaves them within the boundaries of the harbour, it exlcudes them because they were not part of the property of any one of the provinces at the time, they were not public works and property of any province.

[BY THE COURT:—But they were a public harbour?]

But they were not a public work. What was vested in the Dominion was only such public works and property of the Province as the Province owned at that period, and this they did not own, it was the property of the defendants. I really do not think there can be any doubt about that. That being so, this property

1916

THE KING v. POWER.

Argument of Counsel.

never was a public work at any time and never passed to the Dominion.

The Transcontinental Railway which expropriated the land is a separate corporation entirely, it is not the Crown.

The word "improvement" is to be interpreted *ejusdem generis*. It is the same kind of improvement as was contemplated when they gave us the grant.

It is admitted that we own part of the property opposite this, and therefore the description which said that the whole piece sold to defendants was bounded by the Harbour Commissioners' line clearly included the piece of land which is in dispute. In order to get it by prescription I need a title and possession, I need to add the two together. See Art. 2251 C.C. (P.Q.).

Now, I admit on investigation of those titles this piece of land in dispute would not be included in any of the titles referred to as being the titles of the vendor; but I say it is incontrovertible that my vendor distinctly sold me this piece of land.

So far as the Allan sale is concerned it is on the face of the deed shown that they sold without warranty with respect to a large part of their property. The most valuable part of the property which they occupied did not belong to them but to the Crown and was held under a yearly lease arrangement. Evidently in view of the large extent of the land sold by the Allans and the comparatively small sum which they got there seemed to be in the case what the French call *anguille sous roche*—there seemed to be something which was not disclosed on the face of the proceedings.

CASSELS, J., now (May 18th, 1916), delivered judgment.

1916

THE KING v. POWER.

Reasons for Judgment.

This was an information exhibited on behalf of His Majesty the King to have it declared that certain lands described in the information are vested in His Majesty and to have the compensation therefor ascertained.

The lands expropriated are shown on the plan Exhibit No. 3. The plan expropriating the lands in question was deposited on the 8th November, 1913, and it is as of this date that the compensation has to be ascertained. The Crown offers by the information the sum of $12,000, as sufficient and just compensation for the lands expropriated. The defendants other than the Harbour Commissioners and the Church claim the sum of $79,608.95.

Before dealing with the question of compensation I will consider some of the questions in dispute. That portion of the lands in question shown on the plan and lying to the south side of the parcel marked "2415" and bounded on the north by a line south of the end of the wharf having number "60" marked on it and extending south to the Harbour Commissioners' line is not claimed by the defendants other than the Harbour Commissioners. A small parcel of land shown on the plan to the north of the piece coloured yellow and marked on the plan "Leased to Messrs. Atkinson Usborne Co. 25th April 42 (99 years) Area; 720 sq. ft." is held by the defendants Power *et al.* under an emphyteutic lease from the Rector and Church Wardens at a nominal rental of one penny a year.

I am relieved by counsel of the task of deciding the question of the separate amounts to be paid Power *et al* and the Church as it has been agreed between counsel that the land shall be assessed as if owned by Power *et al*, the Church and Power *et al* agreeing to adjust their rights in respect to the compensation

1916

THE KING v. POWER.

Reasons for Judgment.

outside of Court. In reference to the property on the south end of that portion of lands marked "2411" on the east side of the property and designated on the plan: "Grant to R. C. Bishop, 29th November, 1854; area 6335 Eng. Feet." As alleged on behalf of the Crown, the patent contains the following provision:

"Provided further and we do also hereby expressly "reserve unto us, our heirs, and successors full power "and authority, upon giving twelve months previous "notice to the said Corporation to resume for the "purpose of Public improvement the possession of the "said lot or piece of ground hereby granted, or any part "thereof upon payment to the said Corporation of a "reasonable sum as indemnity for the ameliorations "and improvements which may or shall have been made "on the said lot or piece of ground or such part thereof "as may be so required for public improvements, and "in default of the acceptance by the said Corporation "of such sum, so as aforesaid tendered, the amount of "indemnity, whether before or after the resumption of "possession by us, our heirs or successors, shall be "ascertained by two experts, one of whom shall be "nominated and appointed by our governor of our "said province for the time being, and the other by the "said Corporation, or in the event of a difference of "opinion arising between the said experts, by either of "them, the said experts, and the Tiers-Expert or "Umpire chosen by them."

The date of this patent is the 16th day of November, 1854. It is claimed by Mr. Gibsone on behalf of the Crown that no compensation should be allowed for this piece of property, the reason put forward being that the Crown has notified the owner of its intention to take back this piece, and as no improvements or ameliorations have been placed on this particular piece

of land the Crown contends there is no value in them to the defendants. I am not aware of any such notification by the Crown except the statement of Mr. Gibsone which is no doubt correct.

In a case of *Samson v. The Queen* (1), Mr. Justice Burbidge dealt with a case similar in respect to the one in question. The view of the learned judge was to the effect that proceedings having been taken under *The Expropriation Act* and not under the terms of the grant, compensation had to be arrived at: but that in assessing compensation regard must be had to the provision in question which no doubt would seriously affect the value of the land to the grantee. The property in question in the Samson case was situate on the south side of the St. Lawrence (Levis side) and was not vested in the Harbour Commissioners. The case was decided in 1888.

In the case before me I am of opinion that the rights of the Crown in respect to this particular piece of land is vested in the Harbour Commissioners under the provisions of the statute 22 Vict. c. 32, to which I will have to refer later. The result is, in my opinion, that the compensation to this particular piece of land must be paid to the defendants Power *et al* for their interest under the grant in question and to the Harbour Commissioners for whatever their interest may be in respect of having the right to resume the parcel of land. I will deal later as to the method of apportionment.

A further question arises in respect of the piece of property shown on plan Exhibit 3 lying between the two portions of Lot 2411 and marked on the plan "2411" and not coloured yellow. It runs from low water mark to the Harbour Commissioners' line. This parcel of land contains 6,503 sq. ft. It has

(1) 2 Ex. C. R. 32.

1916

THE KING v. POWER.

Reasons for Judgment.

never been conveyed and is vested in the Harbour Commissioners, unless Power and Sharples have acquired a title by adverse possession. It is claimed on behalf of Power *et al* by Mr. Stuart that they had proved a title of possession of more than 10 years and that the property in question is the property of his clients. He relies in support of his contention on a case of *Quebec Harbour Commissioners v. Roche*(1), a case decided by Andrews, J., in 1892. That was a case in which it was held that the prescription of five years barred the right of the Harbour Commissioners as to rents payable in respect of the property in question in that action. I may mention that in most of these cases and also when dealing with the Quebec Harbour Act, "rent" means interest on the purchase money the lands having been sold out and out, the purchase money not paid down but allowed to stand as a charge, the interest thereon being paid. In the case before Mr. Justice Andrews the property in question in respect of which a claim was made for the rents was not within the harbour of Quebec. Without further consideration I am not prepared to hold that the rule adopted in the case of Roche would be applicable to the case before me. As this particular piece of property is unquestionably part of the harbour and is vested in the Harbour Board on the trusts specified in the Act.

I have not considered this question as I think the evidence falls short of any proof of title acquired adversely by Power *et al.* I think, moreover, that the question of whether or not a title by possession had become vested in the owners of these two parcels on either side thereof is considerably weakened by the terms of the statute of 1858. This statute reserves to the owners of the ripa fronting this particular lot

(1) Q. R. 1 S. C. 365.

certain rights of user. These lands had been granted to low water and any user of the open water would be a user sanctioned by the statute.

The statute 22 Vict. (1858) is intituled "An Act to provide for the improvement and management of the Harbour of Quebec". It also defines the boundaries of the harbour. Clause 2 provides that "All land below the line of high water on the north side of the River St. Lawrence within the said limits". It is admitted that under clause 1 these limits are high water mark on the north side of the St. Lawrence and comprise the lands in question. This clause 2 declares that all the lands below the line of high water on the north side within the said limits *now belonging to* Her Majesty whether the same be or be not covered with water are vested in the Corporation.

This lot in which the claim is made for a possessory title had never been granted at the time of the passing of the statute in question. It belonged to Her Majesty at the date of the enactment and passed to the Harbour Commissioners, under the provisions of this clause 2. I think also that on a fair reading of the statute the right of resumption of the other parcel of land to which I have referred on the east side of 2411 and marked on the plan "Grant to R. C. Bishop, 29th November, 1854", also passed to the Harbour Commissioners. The right was certainly an interest in land. This clause 2 also provides that "all rents and sums of money now "due or hereafter to become due to Her Majesty, and "not already by law appropriated or directed to be "applied exclusively to any other purpose, either for "interest or principal, or in any other way, in respect of "any land below the line of high water within said "limits heretofore granted by Her Majesty, whether the "same be or be not covered with water, shall be vested

1916

THE KING v. POWER.

Reasons for Judgment.

"in the Corporation hereinafter mentioned". This therefore vests in the Harbour Commissioners lands belonging to Her Majesty and also rents and sums of money due or to become due in respect of lands theretofore sold, which would vest the rentals due by Power *et al* in the Harbour Board.

Then comes the provision which I think is of importance as showing preservation of the riparian rights over the lot in question; "Provided always that "every riparian or other proprietor of a deep water "pier, or any other property within the said boundaries, "shall continue to use and enjoy his property and "mooring berths in front thereof, as he now uses the "same, until the said Corporation shall have acquired "the right, title and interest which any such proprietor "may lawfully have in and to any beach property or "water lot within the said boundaries; nor shall the "rights of any person be abrogated or diminished by "this Act in any manner whatever."

If any user were proved it would be a user as authorized by the statute and could hardly be claimed as an adverse user. As I have stated, I think the evidence falls short of what would be required to make a title by possession. I agree, however, with Mr. Stuart's argument that the riparian right exists and any further rights given by the statute and that the Harbour Commissioners could not utilize the property in question in such a manner as to deprive the owner of the ripa of his right. This would necessarily add an additional element of value to the lot to the north of this water and also to the properties on either side.

In 1889, 62-63 Vict. c. 34, a statute intituled: "An "Act to amend and consolidate the Acts relating to "the Quebec Harbour Commissioners" was enacted. By clause 6, the harbour of Quebec is defined and by

s.s. 2 it is provided: "But for the purposes of this Act, "except as the application of by-laws, etc., the harbour "of Quebec does not comprise: (a) Any lands, build- "ings, wharfs, quays, piers, docks, slips, or other "immovables, in respect of which the Quebec Harbour "Commissioners have not acquired the right, title and "interest of the owner and proprietor, or a right to "the possession, occupation or use thereof."

This statute contains various provisions amongst others, sec. 20, "to take, acquire and purchase such "immovable property as it considers necessary for the "purposes of extending and improving the harbour of "Quebec or the accommodations thereof, including "the construction for such purpose of wet and dry "docks, wharfs, piers, slips and other such works" etc. And there is a provision authorizing the Harbour Commissioners to dispose of the said immovables.

It is contended by Mr. Gibsone that this only conferred power on the corporation to sell and dispose of such lands as they acquired and did not extend the lands vested in them by the statute. I do not see the materiality of this question. I should think, however, that the right of the corporation is not so limited. Sub-sec. 2 provides "that the sale of any deep water "lot forming part of the property vested in the Cor- "poration shall not be valid or effectual until sanc- "tioned by the Governor in Council." This provision would negative the contention put forward by Mr. Gibsone. Section 21 re-enacts the provisions in respect to the vesting in the corporation of the property acquired in respect of which the corporation could sue or be sued.

The question of compensation to be allowed is one of considerable difficulty. There is a great divergence of opinion on the part of the various witnesses. Some

1916

THE KING v. POWER.

Reasons for Judgment

facts in connection with the case stand out prominently. The property in question is situate at a considerable distance west of what is known as the Queens wharf off Champlain Street.

It has to be borne in mind that the end of the wharf on Lot 2415 and the right to build the wharf is at a very considerable distance to the north of the Harbour Commissioners' line. The lot on the westerly part of 2411 and immediately to the west of the vacant lot vested in the corporation has a frontage of 70 feet 3 inches. The lot forming part of 2411 on the east part of the property in question and immediately to the west of the vacant property contains a frontage of about 88 feet and the wharf in question is about 71 feet north of the Harbour Commissioners' line. This property could hardly be utilized for the mooring of large steamers, there not being a sufficient wharf frontage. Another matter to my mind of importance is the fact that these properties were conveyed to the defendants Power and Sharples on the 5th October, 1901, the one parcel to Sharples, viz., 2411 for the sum of $9,326 and the other to Power, viz., 2415 for $3,000, the whole property having been purchased for the sum of $12,326.

I was informed at the trial that the Harbour Commissioners' line dated back to the year 1842. Mr. Gibsone stated that at the time there was some question of grants along the harbour front and the then Commissioner of Public Works, the Government, instructed a Mr. Ware, a land surveyor, to lay out a plan in which he should take into consideration all the circumstances and recommend to the Government a line beyond which concessions were not to be made.

Prior to the purchase in 1901 for a considerable time and right down to the date of expropriation these

lands had never been utilized. The timber trade was a thing of the past in Quebec. The owners received no return in the way of revenue therefrom. The wharves were depreciating in value. At least five feet from the top would have to be removed and to put the wharves in proper order, it would cost at least $20,000 for the wharves on lot 2411 alone. Evidence giving the value of properties further east in the lower town of Quebec, one bought by the Imperial Bank, to my mind have but little bearing on the value of properties such as the one in question in this action. All this evidence tends to show unquestionably that between 1901 and the date of the expropriation there was a marked advance in the value of property in Quebec. Speaking of Quebec in a general way this is no doubt correct. It by no means follows because the value of properties in certain parts of Quebec had considerably increased that the same relative increase applied to the property in question.

Mr. Gignac, one of the witnesses for the defendants placed the advance at about 40 per cent. Having regard to what was paid in the year 1901 and to the amounts paid for the Lampson and other adjoining properties and to the evidence of Mr. Couture whose opinion is entitled to weight, my opinion is that the offer Mr. Gibsone made on the argument of what he considered to be a fair value and which he was willing to allow on the part of the Crown is about correct and I think ample.

On the 2nd day of October, 1911, His Majesty exhibited an information in this Court asking to have it declared that certain lands therein described being a portion of lot 2411 described in the present information should be declared vested in His Majesty and offering as compensation $42,597 therefor. By the

1916

THE KING v. POWER.

Reasons for Judgment.

defence to that information the defendants accepted this amount. This information was discontinued and the lands revested in the defendants in the same manner as the lands were revested in *Gibb v. The King*(1).

Mr. Stuart claims this offer should be treated as conclusive of the value of that portion of the lands in question in this action. I do not agree with this contention. The officials of the Crown who made the valuation upon which the tender in the previous information was based were not called as witnesses and the offer may have been based on altogether erroneous information and basis as to the value. The Crown discontinued that information and I have to determine the value on the evidence before me, of course not losing sight of the previous offer.

On behalf of the Harbour Commissioners for the land not coloured yellow and situate between the two parts of 2411, Mr. Dobell on behalf of the Harbour Commissioners is willing to accept 25 cents a square foot which I think is reasonable. I make the area of this land 6,503 square feet which at 25 cents a square foot would amount to $1,625.75.

In regard to the piece of land on the east side of 2411 to which I have referred marked "Grant to R. C. Bishop, etc,". the area as I make it is 6,335 square feet. Mr. Gibsone for the Crown places the sum of $2,000 as the value of this piece, an amount which the Crown is willing to pay and I think this amount is a fair sum to allow. I am not prepared to divide this amount between the Harbour Commissioners and the owners, their being no evidence before me. Failing an agreement between counsel, there will have to be a reference to ascertain the relative proportions. I figure the area of all the lands owned by Sharples &

(1) 52 S. C. R. 402.

Co., including the small piece containing the 742 square feet leased to the Church and excluding the piece to the south of the east part of lot 2411 as amounting to 55,751 square feet. For this land, I would allow the sum offered by Mr. Gibsone on behalf of the Crown at an average of 30 cents per square foot which would amount to the sum of $16,725.30. As to the wharf properties as they stand, Mr. Gibsone on behalf of the Crown offers the sum of $1.50 per cubic yard which I think under the circumstances of the case, is ample. I figure out the contents of the various wharves to be 13,366 cubic yards which at $1.50 would amount to $20,049.

To this sum of $36,774.30 which is payable to the defendants Power, Sharples *et al.*, should be added whatever proportion of the $2,000 (the amount the Crown is willing to pay) for the 6,335 feet for the lot on the south of the east side of lot 2411 marked "Grant to R. C. Bishop, etc." that may be determined as being properly payable to the defendants Sharples & Co. I would suggest this $2,000 should pass ½ to Sharples & Co. and ½ to the Harbour Corporation, but it is merely a suggestion. Interest should be allowed from the 8th November, 1913, on the total amount.

I am of opinion that the defendants Power *et al.*, will be fairly and fully compensated for all claims in respect of their interest. If the Harbour Corporation enforce their claim against the Crown, they are entitled to the proportion of this lot on the south of the east part of lot 2411 and to 6,503 feet for the water lot between the two portions of lot 2411 and to 2,220 feet being the water lot on the south side of 2415, namely, 6503 and 2217 equal 8,720 square feet at 25 cents—$2,180, to which will be added their portion of the lot to the south

1916

THE KING v. POWER.

Reasons for Judgment.

of the eastern portion of lot 2411 and interest on their claim from the 8th November, 1913.

The defendants are entitled to their costs of the action.

Counsel can put me right as to the area of the different parcels if I have erred and I will be glad to have their views. Counsel facilitated the trial materially by their manner of conducting the trial and I have no doubt they can agree on the quantities—the price being found.

Judgment accordingly.

Solicitors for plaintiff: *Gibsone & Dobell.*

Solicitor for the defendants, other than the Harbour Commissioners and Rector and Church Wardens of St. Paul's Church: *G. G. Stuart.*

Solicitor for the Quebec Harbour Commissioners: *A. C. Dobell.*

Solicitor for the Rector and Wardens of St. Paul's Church: *R. Campbell.*