

1917
Jan. 24.

IN THE MATTER OF THE PETITION OF RIGHT OF
EDOUARD RUEL.....SUPPLIANT;
AND
HIS MAJESTY THE KING.....RESPONDENT.

Expropriation—Easement—Damages—Prospective profits.

After R. had acquired the easement of laying pipes for an aqueduct and sewers upon certain lands, the Crown expropriated part of the same which stood at an extremity. R. claimed the full value of the aqueduct together with the sum of \$20,000, representing the alleged decreases for the future of the benefits he would have derived from private buildings he claims he had a right to expect would be erected on the side of the lands taken by the Crown.

Held, that R. had no estate or interest in the lands taken, save the easement above mentioned, and as there was no covenant from his grantor to stipulate with his lessee and grantee that they would take water from such aqueduct and drain from such system, he could not recover such prospective profits. All he was entitled to was the value of the piece of aqueduct expropriated and the value of the easement upon the same.

THIS was a petition of right seeking compensation for an easement of an aqueduct and sewerage system upon certain lands taken for the construction of a dry dock at Lauzon, P.Q.,

The case was tried at Quebec, on November 22–23, 1916.

F. Gosselin and *F. Roy*, for suppliant; *W. Amyot*, for Crown.

AUDETTE, J. (January 24, 1917) delivered judgment.

The suppliant, by his amended petition of right, seeks to recover the sum of \$25,000 as alleged damages, resulting from certain expropriations by the Crown in connection with the new dry dock, at Levis, P.Q. This amount is made up of the value of a system of aqueduct and sewerage, which he reckons at the

sum of.....\$5,000
together with the further sum of.....20,000
arising out of the construction of the dry dock, which it is

alleged, decreases, for the future, the benefits he would have derived from private buildings he had a right to expect would be erected on the site of the dry dock.

As a prelude, before coming to the actual facts of the case, it is well to state one must guard against a number of the allegations in the petition of right which do not, by any means, disclose the true facts of the case. This improper behaviour of deliberately drawing misleading and reckless pleadings with respect to questions of fact cannot be condoned, or cannot be met with too severe condemnation at the hands of the courts, with the object that such condemnation might tend much towards maintaining the high ethics and good traditions of the bar. The Court has a right to expect utmost good faith in its relations with the Bar.

Paragraph 3 of the petition of right for instance alleges, on the one hand, that since 1914 the system of aqueduct ceased to be operated, and yet the suppliant's son who manages this system of aqueducts produces, on the other hand, among other evidence, statements filed as exhibits, numbers 7 and 8, showing the revenues derived from the aqueduct from the Davis firm alone from 1914 to November, 1916, amounting to \$1,921.72, and this is besides the other general revenues of the aqueduct.

Paragraph 5 alleges there were 10 dwellings on the part taken by the Crown, while the evidence discloses only 5; and paragraph 9 alleges that the Government has expropriated all the lands (terrains) where the system of aqueduct and sewerage are. Now these are not the facts of the case, and to the suppliant they were better known than to anyone else.

Indeed, the case freed from all these erroneous allegations resolves itself in the simple fact that prior to the expropriation, by the Crown, the suppliant had acquired upon lots Nos. 5 and 6, for the sum of \$30.00 the easement of laying the pipes of a system of aqueduct and sewerage, as the whole more clearly appears by reference to Exhibits 1, 2 and 3, filed herein. Subsequent to the expropriation, whereby a certain portion only of these lots was expropriated, the Government in the course of the works of excavation for the purpose of the dry dock, tore up and

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took away a small portion of the pipes of this aqueduct, destroying the cesspools, and sewerage thereto in connection with the five buildings in question between points "A" and "F" hereinafter mentioned. To properly understand the matter reference should be had to plan, Exhibit "A." From the letter "A" to the Letter "F" on the plan, a distance of about 1,170 feet, the Crown took away this aqueduct and destroyed the cesspools above mentioned, and for such damages and the value of the easement in question, the suppliant should be compensated. The suppliant, it will be noticed, is not the owner of the land taken, the only interest he has therein is what was conferred by the deeds giving said easements or servitude.

The aqueduct also crossed the respondent's land from point "C" to "D," where the suppliant has, under his title, the right by easement to lay his pipes. At the trial the Crown filed an undertaking whereby the suppliant is given the same right upon these lands between "C" and "D" as he formerly had.

A deal of conflicting evidence has been offered with respect to the compensation which should be awarded the suppliant in respect of the damage to his aqueduct between points "A" and "F." The Crown in that respect has adduced the evidence of its engineer in charge of the works of the dock who has seen the pipes, and he values the whole matter at the sum of \$423.90, as set out also in the respondent's plea. On behalf of the suppliant a deal of so-called expert evidence is given by men who were not there at the time of the building or the tearing up of the aqueduct; but who prepared their statement upon the information supplied by the manager of the aqueduct, the suppliant's son. The latter has no data of the original cost, no evidence of the original cost has been offered, but estimates prepared in the most optimistic manner.

The easement upon the whole area of these lots has cost the suppliant \$30. Arriving at the compensation with respect to the damages between said points "A" and "F", which the Crown's evidence establishes at \$423.90, if the suppliant were allowed the double of that, say \$847.80, he would be more than generously compensated, especially in view of the value of the whole system. Then

allowing the sum of \$60 for the easement on points between "A" and "F", an easement upon the whole area of such lots costing the suppliant only \$30, as set forth in the deed filed herein, he would also be amply compensated.

Coming now to the claim of \$20,000 which is alleged as representing the decrease in the future of the benefits the suppliant alleges he would have derived from private buildings he had a right to expect would be erected on the site of the dry-dock, it must be readily and obviously found he has no right to such claim.

Indeed, when the suppliant purchased the easement enabling him to construct the system of aqueduct and sewerage, there was no contract with the owner who granted him the easement that the latter would stipulate with his lessees or grantees of the land in question that they would take water from the aqueduct, and in the absence of such contract or covenant running with the land, the claim to such a right is at large—in fact there is no right. He could not, moreover, recover for loss of profits under the circumstances, the damages being too remote.

The lands in question could have been sold to any one instead of being expropriated, and the purchaser would always have the right to use that land in a perfectly untrammelled manner with unfettered control subject to the easement only. He could refuse to take water from the suppliant, or take it from whomsoever he cared. He could use the land for manufacturing purposes, pump his water from the River St. Lawrence or use no water. The matter, indeed, is too clear and too obvious to say any more in that respect.

The suppliant had no estate or interest in the lands in question, save the easement to lay the pipes of his aqueduct and sewerage; and he cannot be compensated for more than that easement and the damages arising out of the same, in the manner above mentioned.

The Crown by its undertaking filed at trial has granted the easement to lay pipes between the points "C" and "D" and has offered the suppliant the sum of \$1,200 in satisfaction of his claim. The same has not been accepted, and this offer of \$1,200 must have been previously made, since it is alleged in paragraph 14 of the petition of right

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but would not appear to cover the continuation of the easement mentioned in the undertaking. By the time the undertaking was so filed, the evidence was practically all adduced; but there is in this case a deal of unnecessary evidence adduced by the suppliant in respect of his claim for the value of the whole of his system of aqueduct and sewerage and for his prospective damages, upon which he fails and which would entitle the Crown to its costs. However, taking into consideration that this is a matter of expropriation where the easement is taken away compulsorily by the Crown, there shall be no costs to either party.

There will be judgment as follows:

1st. The easement on the land in question herein from points "A" to "F" on Plan Exhibit "A", filed herein, is declared vested in the Crown from the date of the expropriation.

2nd. The suppliant is entitled to the easement conferred in his favour between points "C" and "D," on said plan "A," as set forth in the said undertaking.

3rd. The suppliant is further entitled, upon giving to the Crown a full discharge of all his interest in the land between points "A" and "F," to recover from the respondent the said sum of \$1,200 without interest and without costs.

Judgment for suppliant.

Solicitors for suppliant: *Dorion and Gosselin.*

Solicitors for respondent: *Drouin, Sevigny and Amyot.*
