

HIS MAJESTY THE KING, on the  
Information of the Attorney-General  
of Canada,.....Plaintiff;

1913  
March 19.

AND

ROBERT BICKERTON,.....Defendant.

*Expropriation--Previous Sale of Lots in neighbourhood by defendant--Market value--  
Test.*

In assessing compensation for lands taken for a public work, sales made by the defendant to the Crown of other lands for the purposes of the public work in the neighbourhood of those taken may be relied on as establishing the market value of the lots expropriated.

THIS was an information exhibited by the Attorney-General of Canada seeking a declaration that certain lands required for the use of the Transcontinental Railway had become vested in the Crown by virtue of the expropriation in that behalf, and that a certain amount tendered by the Crown be adjudged sufficient compensation to the defendant.

The facts are stated in the reasons for judgment.

The case was heard at Winnipeg on October 17th and 18th, 1912, before the Honourable Mr. Justice Audette.

*A. J. Andrews, K.C., and A. Sullivan, for the plaintiff.*

*G. W. Jameson, for the defendant.*

AUDETTE, J. now (March 19th, 1913) delivered judgment.

This is an amended information exhibited by the Attorney-General of Canada, whereby it appears the Commissioners of the Transcontinental Railway have entered upon, taken possession of and expropriated certain lands described in paragraphs 2 and 2½ of the

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said information, for the use of His Majesty The King in the construction and maintenance of the National Transcontinental Railway.

A plan and description of the said land mentioned in paragraph 2 of the said amended information were deposited of record, on the 6th day of September, A.D. 1911, in the Land Titles Office, in the City of Winnipeg, for the Winnipeg Division of the Province of Manitoba.

Then it having transpired in the course of the trial that lots 25 to 29 would be so materially damaged by the present expropriation, the information was by consent amended whereby it appears that the Crown has now taken possession of the said lots 25 to 29 in Block I, and that the compensation to be arrived at in the present instance should also cover the value of these last lots, in addition to the value of the land described in paragraph 2.

For the compensation of the said lands mentioned in paragraph 2 of the said information, the Crown tendered by the information the sum of \$4,752, made up as follows, to wit:—

For parcel No. 1.....	\$	2,200
For parcel No. 2.....		1,100
For parcel No. 3.....		1,452
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		\$4,752

The defendant by his plea avers that the Crown's tender is not sufficient or just compensation for the said lands, and claims for Parcel No. 1, \$2,500, and for damages to lots 1, 2 and 3 adjoining, \$1,500..... \$4,000  
 For Parcel No. 2, \$1,250, and for damages to lots 25 to 29 now expropriated by the amended information, \$2,000..... 3,250  
 For Parcel No. 3, \$3,040, and damages to

lots 2 and 3 and balance of lot 4 adjoining \$9,500.....	12,540
The defendant further claims damages to lots 1 to 4 both inclusive in Block 1, which lots are shown upon a plan of sub-division of part of lots 74 and 75 of the Parish of St. Boniface, registered in the Winnipeg Land Titles Office as No. 1160.....	2,000
Further damages to lots 27 to 35, both inclusive, in Block 2.....	1,800
	\$23,590

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However, in the total sum of \$23,590 is not included the value of the lots 25 to 29 in parcel 2, but only the \$2,000 damages on the assumption of no expropriation of the same. This is also true of the Crown's tender, and it must be borne in mind that in its tender of \$4,752, the value of the lots 25 to 29 is not included, but only such damages to the same as were then estimated.

The parties admitted that the Crown took possession of the land in question on the 15th September, 1910.

The Crown, by its counsel, also filed at the trial an undertaking, under the provisions of section 30 of *The Expropriation Act*, to acquire and dedicate to the public as a street lots 26 and 27, and 14 and 15, as the same are shown on a plan of lot 75, St. Boniface, registered as Number 1160.

The lands expropriated in the present case, including what has been added by amendment, are composed of three parcels divided as follows, to wit:—

Parcel No. 1—Lots 4 and 5 in Block 2, as shown on plan Exhibit Number 2.

Parcel No. 2—Lot 30 in Block 1, together with lots 25, 26, 27, 28 and 29 in said Block.

Parcel No. 3 Jog Portion of lot 4 in Block 4.

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[His Lordship here reviews the evidence.]

The lands in question herein must be assessed as of the date of the expropriation, at its market-value in respect of the best uses to which it can practically and economically be put, taking in consideration any prospective capabilities or value it may obtain in a reasonably near future.

The property was bought, as a block of land of ten acres, in 1905, for the sum of \$12,500, and was divided in building lots in January 1906. There was a slump in the real estate market from 1906 to 1907, with a slight increase from 1907 to 1908, and Mr. Bickerton says there was not a big increase between 1908 to 1910.

During the months of May or June, 1906, the defendant sold:

Lots 31 to 35 in Block 1, at \$12 a foot;

Lots 5 to 17 do do do

Lots 6 to 17 in Block 2, do do

and two years later, in 1908, he also sold lots 1 to 8 in Block 3 at \$12 a foot.

Then in 1910, about June, he sold lots 9 to 14 in Block 3 for \$20 a foot,—equal to \$500 a lot. And in May, 1910, he sold lots 18, 19 and 20 in Block 2 for \$35 a foot for the right of way of the Transcontinental Railway. In the last sale, although the evidence does not disclose it openly, it must be inferred that \$35 a foot would include all damages resulting from such expropriation. The amount now tendered by the plaintiff with respect to parcels 1 and 2, is at the rate of \$44 a foot, including damages.

With respect to Parcels 1 and 2, the proprietors' evidence shows that with respect to Parcel 1, McPhail values it at \$40 to \$60 a foot with damages of \$500 a lot for lots 30 to 36, and with respect to Parcel 2, \$50 a foot. Then witness Long values Parcel No. 1 at \$50 a

foot as trackage, and considers lots 1, 2, 3, 29 and 30 damaged by \$500 a lot,—and Parcel 2, \$50 a lot. Witness Bickerton values Parcel 1 at \$50 a foot, and lots 1, 2 and 3 damaged by \$500 each, and 29 to 35 by \$1,800 altogether—and Parcel 2, at \$50.

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The witnesses for the Crown value Parcels 1 and 2 at \$15 a foot,—with damages to Parcel 1 estimated by Sheppard, respecting lots 1, 2 and 3 at 35 per cent or equal to \$450 for the three lots, and by witness Pope at \$125 for each lot, and witness Black at \$450.

It will appear at first sight that the conflict between the witnesses is very material. What can help out of the difficulty if not sales made in the neighbourhood? We have the sales made by Bickerton himself in 1906 at \$12 a foot; in June, 1910, at \$20; and in May, 1910, at \$35 a foot for the right of way of the Transcontinental, which as previously said must in this last case include all damages resulting from the expropriation. These sales to the Railway are in Block 2. What could be better evidence of the market price, if not sales actually made under similar circumstances. We have also the admission by counsel that a number of lots were sold in 1911 in Block 1 for \$17 a foot. The Crown has offered \$44 a foot including damages, an advance of \$9 a foot on the sales made in May, about four months before, by the defendant himself.

The Court therefore looks upon the tender as fair and liberal and will not interfere with it.

The same ratio of \$44 a foot will be accepted for Parcel No. 2, which is now composed of lots 30, 29, 28, 27, 26 and 25,—namely six lots of 25 feet frontage, equal to \$6,600 including all damages.

Coming now to Parcel No. 3, witnesses McPhail and Long value it at \$75. McPhail says there is no damage to lots 2, 3 and 4 in Block 4, but Long says

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there is a damage of 20 to 30 per cent. to balance of lot 4. Bickerton values it at \$100 a foot, with damages to the balance of lot 4 at \$50 a foot for 80 feet, and considers lots 2 and 3 damaged by \$25 a foot. On behalf of the Crown, Sheppard values it at \$35 to \$40, or \$750 including all damages. Pope values it at \$20 a foot including damages, and Black at \$18 a foot for 35 feet, or \$550, including all damages. The Crown, by the information, tendered nearly \$48 a foot including damages.

The proprietor's witnesses have valued the other pieces of land at \$50, placing them in the trackage class (notwithstanding they were actually divided in building lots and were being then sold as such). Let us accept that value for Parcel No. 3, including all damages that may accrue to the balance of lot 4 and to lots 1, 2 and 3,—although all the Crown's witnesses say there is no damage, and that opinion is shared by witness McPhail on behalf of the defendant. If, indeed, there is any damage to the adjoining lots it can hardly be appreciable, specially in view of the fact that if it is trackage property, the fact of running a railway upon it could not obviously hurt it much—even if not in the manner the most acceptable to the owner.

The Court is of opinion to allow \$50 a foot, including all damages for the piece taken in Parcel No. 3, namely, 30.4 feet, making a total sum of \$1,520.

Therefore the following sums will be allowed as follows, to wit:

Parcel No. 1.....	\$2,200
Parcel No. 2.....	6,600
Parcel No. 3.....	1,520
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Making in all the sum of.....	\$ 10,320

to which shall be added 10 per cent. for compulsory taking, and to cover every element of damage which might have been overlooked.....

1,032

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 \$11,352

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There will be judgment as follows, to wit:

1. The lands and real property expropriated herein, including lots 25 to 29, in Parcel No. 2, are vested in the Crown as of the date of the expropriation.

2. The defendant, upon giving a good and sufficient title and a release of all incumbrances, if any, upon the said property, is entitled to be paid the said sum of \$11,352 with interest thereon at the rate of five per centum per annum from the date of the taking possession, namely, the 15th day of September, 1910, to the date hereof—the whole in full satisfaction for the lands taken and for all damages whatsoever resulting from the said expropriation.

3. The defendant is further entitled, under the provisions of the undertaking filed at trial by counsel for the Crown, to have the Crown acquire and dedicate to the public as a street lots 26 and 27 and 14 and 15, as the same are shown on a plan of lot 75, St. Boniface, registered as Number 1160.

4. The defendant will be entitled to the costs of the action after taxation thereof.

*Judgment accordingly.*

Solicitors for the plaintiff: *MacDonald, Sullivan & Tarr.*

Solicitors for the defendant: *Thomas & Jameson.*