1916
Jan. 10.

HIS MAJESTY THE KING, ON THE INFORMATION OF HIS MAJESTY'S ATTORNEY-GENERAL FOR THE DOMINION OF CANADA,

PLAINTIFF;

AND

MARIE CAROLINE ROY, DAVID FALARDEAU, THE ROYAL TRUST COMPANY AND FRANK CARREL, LIMITED,

DEFENDANTS.

Expropriation—Plan and description—Book of Reference—Metes and Bounds—Special adaptability—Market value—Second expropriation.

1. Depositing in the Registry Office of a plan and a copy of the "Book of Reference," is not a compliance with the provisions of section 8 of *The Expropriation Act*—it is a plan and description by metes and bounds that is so required.

2. Special adaptability for railway purposes is nothing more than an element in the general market value of the property.

3. The owner of property over which one railway has already obtained a right of way is entitled to other and different damages for a second railway expropriating lands alongside the first, the property having already adjusted itself to the first expropriation.

THIS was an information exhibited by the Attorney-General for the Dominion of Canada seeking to have compensation assessed for certain lands taken for the National Transcontinental Railway Company.

The facts are fully stated in the reasons for judgment.

November 3rd, 4th and 5th, 1915.

The case was heard before the Honourable Mr. Justice Audette at Quebec.

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G. G. Stuart, K.C., for plaintiff;

T. Vien, *L. St. Laurent* and *A. Lachance* for defendants.

AUDETTE, J., now (January 10th, 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 were taken and expropriated, under the authority of 3 Ed. VII, c. 71, for the purpose of the National Transcontinental Railway, a public work of Canada, by depositing plans and descriptions on the 7th April, 1906, and on the 2nd March, 1914, with the Registrar of Deeds for the County of Quebec, P.Q.

The actual quantity of land taken forms *in limine* the subject of controversy. By section 8 of *The Expropriation Act*, the land taken must be laid off by metes and bounds and a plan and description thereof deposited in the Registry, in a case where no settlement is arrived at. On the 7th April, 1906, a plan and a copy of the Book of Reference were deposited in the Registry Office, without any such description as required by the statute. The deposit of a plan with a copy of the Book of Reference, is not a compliance with *The Expropriation Act* which requires the lands to be described by metes and bounds. This question has already been the subject of judicial pronouncement, and even legislation was resorted to when such error had been fallen into in the case of the building of the Intercolonial Railway, as will more particularly appear by reference to sections 81 and 82 of *The Government Railway Act*, R.S.C. 1906, c. 36.

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From the plan alone, as deposited on the 7th April, 1906, it appears that the area taken from the defendant is 8.55 acres.

Under the provisions of section 9 of *The Expropriation Act*, a corrected plan and description may be deposited with like effect, in case of any misstatement or erroneous description in such plan or description.

Acting under the authority of section 9 the plaintiff, through the proper officer, deposited in the said Registry on the 2nd March, 1914, a new or corrected plan and description by metes and bounds of the land expropriated, setting forth the area at 7.14 acres—as against the original plan showing 8.55.

The reason of the conflict in respect of the measurement is explained in the following manner, and was admitted by counsel for the defendant at the argument. By the defendant's title to her property, the farm is of two arpents in width, whilst by the cadastre it is two arpents and six perches. The cadastre does not constitute a title, but it is merely a description, and I regret to say it is very often erroneous in its descriptions.

The property was measured by two surveyors. One, Mr. Tremblay, called by the plaintiff, the very person who made the measurements for the corrected plan and description deposited on the 2nd March, 1914, is an officer who has proved himself to be most reliable and accurate all through these expropriations at Quebec. For the defendants one surveyor was examined, taking as his datum a very uncertain and unsatisfactory point and for the purpose of finding the quantity claimed had to take land from the neighbours. At the time he was upon the ground for the purpose of settling these boundaries, some of the neighbours were repre-

sented; but the Crown was neither notified nor represented although the owner at that date. To find 7.64 acres the surveyor had to encroach on the neighbours' property and their consent to that effect was not at the date of the trial signified to the defendant. And what would their consent amount to, in any case; the lands on each side of the defendant's property have been expropriated and vested in the Crown ever since the deposit of the plan and description. The neighbours have no title to that portion of this farm expropriated—that title or interest is converted into a claim to the compensation money.

Under all of these circumstances, I find that the area actually expropriated from the defendant, is the area set forth in the information and in the corrected plan and description deposited on the 2nd March, 1914, namely 7.14 acres.

By the information the Crown offers for the land so taken and for all damages resulting from the expropriation the sum of $2,677.50 or $375. per acre. The defendants by their plea aver that the offer by the Crown is insufficient and claim at the rate of $1. per foot the sum of $372,438.—a most unreasonable and extravagant claim unsupported by the evidence. The defendants further claim an overhead crossing across the railway track to communicate with a piece of property valued by uncontroverted evidence at $433.—a most ambitious and preposterous claim.

The property in question is situate on the south side of the St. Louis Road, six or seven miles from Quebec, with frontage on the highway and running down to the St. Lawrence, in the immediate neighbourhood of the Quebec Bridge in course of construction. On the highway, about 400 feet deep on its width, is a plateau upon which grass or hay grows. Running south from

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these 400 feet, there is a dip of between 40 to 75 feet, at the foot of which lies the piece of land expropriated. The piece taken was partly swampy and partly covered with a second growth of trees. With the exception of a small fifty-foot strip which could be cultivated, the balance being unfit for agricultural purposes, the soil was composed of boulders and hard pan. After taking possession of this piece of land, a ditch from 4 to 5 feet in depth was dug to drain it, as it was impossible to use it in the state in which it was, says engineer Montreuil.

The southern part of the property still remaining to the defendants on the southern side of what was the Quebec Bridge Railway running to Champlain Market, is waste land, open bush, upon rocky and swampy soil. There are no buildings upon this property—the owners never resided upon it. It was never operated as a farm, but was used for pasture—the upper part adjoining the highway was rented for pasture.

From 1902 to 1907 the whole lot No. 352 composed of 32 acres was under the municipal assessment, valued at $660.

On behalf of the defendants, witness A. Turgeon values the land taken at 20 to 25 cents a square foot, as an industrial site, but more especially to be used as a railway yard, as it is impossible for residential purposes.

Rupert McAuley, who admits not knowing the value of these properties in 1906, as he did not know Quebec before 1912, values the land taken at 20 cents a square foot, as being suitable for industrial purposes.

Joseph B. Poirier and Malcolm J. Mooney, valued the land, for railway and industrial purposes, at 20 to 25 cents a square foot. And Frank Carrel places a

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value of 25 cents a square foot upon the expropriated land.

On behalf of the Crown, witness J. J. Couture, taking in consideration the nature of the land and the locality, values the lands taken at $150 to $200 an acre, including all damages. He adds that in 1906 the work shops were much spoken of, but that we could not have found at that date any individual willing to give as much as $150. an acre for that land which had its value for pasture only. He further says that on account of the sales of the surrounding lands it might have a higher value. In his assessment he does not take the speculative but only the market value into consideration. If he were considering the speculative value, he would allow $300. an acre—the price paid for the neighbouring properties.

Edmond Giroux, starting with the idea that the defendant should be satisfied with similar prices paid to her neighbours, values the land in question at $200 an acre, together with $25. for damages, making in all $225. per acre, for land and damages. This witness further describes the southern part of the property, as a rocky hill, covered with underbrush and swampy. The area of this southern part is 628,062 feet, equal to 14.45 acres, which he values at $25. to $30. an acre.

Jean Baptiste Godreau says the land expropriated has no value for agricultural purposes, but taking in consideration it is occupied by a railway, he values it at $150. an acre. His farm, four miles further out from the bridge was taken for an experimental farm, and he received $50. an acre for 90 acres, and $100. an acre for a grove.

Désiré Brosseau values the land taken at $150. for the same reasons given by the previous witness.

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Eugène Lamontagne places a value of $250 an acre upon the land taken in 1906, foreseeing the passage of a railway. The part taken valued for industrial purposes would not be worth any more.

As is customary in expropriation matters we are facing a great conflict in the opinion evidence respecting the value of the land taken. The sum of $1. a foot is claimed by the pleadings, but no witness testified to such a value. The highest valuation testified to is 25 cents a square foot, and the lowest valuation is $150. an acre. A difference between $150. and $10,890. an acre. Or a variation for the 7.14 acres taken between $1,071. and $77,683.20.

How can these valuations be reconciled? What can help out of this material difficulty, if not sales made in the neighbourhood? What can be better evidence of the market value of the present parcel of land so expropriated, if not the actual and numerous sales made by the adjoining owners under similar circumstances.

As already said in the *King* v. *Falardeau*(1) tihs property must be assessed as at the date of the expropriation, at its market value in respect of the best uses to which it can be put, taking into consideration any prospective capabilities, special adaptability, or value it may obtain within a reasonably near future. The market value of the lands taken ought, however, to be the *prima facie* basis of valuation in awarding compensation.(2)

In 1904, the defendant sold to the Quebec Bridge Company, 1.02 acres of this lot 352, for $300. including all damages and the severance of his property. On the 23rd July, 1891, the defendant acquired four-fifths of the whole property—she being already the owner of one-fifth, for the sum of $380.

(1) 14 Ex. C. R. 275. (2) The King v. Dodge, 38 S.C.R., 155.

The following sales were made to the Transcontinental Railway in 1906, 1907 and 1908, of properties in the immediate neighbourhood, with about the same configuration, topography and kind of soil, viz.:

In October, 1906, 0.71 acres of lot 351 for $325, including damages and severance, = $457. per acre.

In October, 1906, 1.98 acres of lot 349 for $497. including damages and severance, = $251. per acre.

In October, 1906, 1.73 acres of lot 347, for $430.50, including all damages and severance, = $249. per acre.

In April, 1907, 2.76 acres of lot 350 for $700., including damages and severance, $254. per acre.

In February, 1907, 10.18 acres of lot 358 for $1,527., including damages and severance, = $150. an acre.

In November, 1907, 20 acres of lot 359, for $3,500, including damages and severance, = $175. per acre.

In May, 1908, 61.15 acres of lots 354, 355, 356, and 357 for $22,848.18., = $350 per acre.

In May, 1908, 66.70 acres of lot 357 for $23,345., = $350 per acre.

In August, 1908, 17.17 acres of lot 353 for $3,500., including all damages and severance, = $204 per acre.

In December, 1908, 2.70 acres of lot 358 for $405, including damages, = $150 an acre.

The several deeds of these sales are filed herein as exhibits and from plan., exhibits No. 4 and "C," will appear the respective location of these lots in juxtaposition to the present property.

The prices paid under these circumstances afford the best test and the safest starting point for the present inquiry into the market value of the present property.[1]

The question of "special adaptability" has been argued at considerable length with the object of establishing competition of buyers from the alleged

(1) Dodge v The King, 38 S.C.R., 149; Fitzpatrick v. Town of New Liskeard, 13 Ont. W.R., 806.

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railway companies, which, under the statutes creating the Quebec Bridge Co., now merged in the Crown, would likely establish terminals at the northern side of the bridge. Without reviewing here the statutes referred to and the facts as to whether or not the principal railway companies in question have or have not already railway yards in the neighbourhood, it must be admitted that the compensation which should be awarded is in no sense more than the price that the legitimate competition of purchasers would reasonably force it up to.[1] When it is claimed that the property has a high value on account of its special adaptability for railway purposes, it is not claimed that such special purposes are limited to the Transcontinental, the party expropriating; but that the situation of the land in the neighbourhood of the Quebec Bridge will bring in other railway companies as prospective competitive purchasers. In such case it becomes an element in the general value. As such it is admissible as to the true market value to the owners and not merely value to the taker, as said in the case just cited.

In the present case the land expropriated was of very little value to the owner. It was a piece of swampy and rocky land, mostly covered with second growth and practically yeilding no revenue. Therefore, even by the offer made by the Crown the owner is offered more than the land is worth to him for his own purposes, and he is offered the market value of the land enhanced by the special adaptabilty from the neighbourhood to the bridge, the erection of which, it is estimated would bring competing railway companies who would require land for their own purposes. In the amount offered by the Crown is merged both the intrinsic value, and the market value, of the land

(1) Sidney v. North E. Railway (1914) 3 K.B., 641.

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enhanced, by this special adaptability for railway purposes due to prospective competitive purchasers, as special adaptability is nothing more than an element of market value.(1)

In the case of *Sydney v. North Eastern Railway*,(2) a very instructive discussion on this question of special adaptability will be found. In that case at page 637, Rowlatt, J., says:—

"Now, if and so long as there are several competi-
"tors 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 pro-
"moter, who is now, though he was not before, freed
"from competition. 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."

(1) Idem., p. 640. (2) (1914) 3 K.B., 637.

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And in the *Cedar Rapids Case*,(1) Lord Dunedin lays down the following rule for guidance upon the subject-matter of special adaptabilities in the following language:

"For the present purpose it may be sufficient to "state two brief propositions: (1) The value to be "paid for is the value to the owner as it existed at the "date of the taking not the value to the taker.

"(2) The value to the owner consists in all advan- "tages which the land possesses, present or future, but "it is the present value alone of such advantages that "falls to be determined.

"Where, therefore, the element of value over and "above the bare value of the ground itself (commonly "spoken of as the agricultural value) consists in "adaptability for a certain undertaking (though "adaptability as pointed out by Fletcher Moulton, "L. J. in the case cited, is really rather an unfortunate "expression) the value is not a proportional part of "the assumed value of the whole undertaking, but is "merely the price, enhanced above the bare value of "the ground which possible intended undertakers "would give. That price must be tested by the "imaginary market which would have ruled had the "land been exposed for sale before any undertakers "had secured the powers, or acquired the other "subjects which made the undertaking as a whole a "realized possibility."

Some stress has been placed by the defendant upon the fact that buildings or shops, and a travelling crane have been put upon the land taken, with spurs running to them. But all of this has been made clear by the evidence. These buildings and shops, and the spur lines, including the crane, were only of a temporary

(1) (1914) A.C., 576.

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nature, put up by the contractors for the second bridge. The contractors for what is called the first bridge did not use it. In 1906 the piers of the first bridge were finished, and part of the ironwork put up. The bridge fell in August, 1907. These spurs and buildings will disappear and there will then be no obstruction in the new road given the defendant.

Now I have had the advantage of viewing the premises in question, in the company of counsel for the respective parties, and after weighing the opinions of experts, or rather valuators, as against the actual several sales, of the large quantity of land on both sides of the defendant's property, who, in her isolation is holding up for an extravagant and unreasonable price, and applying the principles in the two last cases cited, I have come to the conclusion that to allow, not the bare value of the land, but the most liberal and generous price possible under the circumstances, namely the sum of $500. an acre, including, as in the sales above cited, all damages resulting from the expropriation—a fair and liberal compensation will have been paid the defendant, including all enhanced value flowing from the element of special adaptability which went to establish the market value of the land at such high valuation.

There is the further question of the crossing over the Quebec Bridge Railway Co., which is now vested in the Crown, and the damages to the balance of the property to the south. The Crown has undertaken by the Information to give the defendant the crossing therein mentioned that will be part of the compensation awarded herein. However, some question has arisen as to whether or not the crossing as described and tendered, takes the defendant entirely across the said right of way—and if it does not whether the defendant

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being no more in possession or owner of the land on each side of the said right of way of the Quebec Bridge Co., now merged in the Crown, would be able to obtain a complete crossing from the Railway Commission.

However, the value of the land to the south has been established in this case, by uncontroverted evidence at $25. to $30. an acre. The area to the south is of 628,062 feet, or 14.45 acres. Giving the defendant the benefit of both the highest price and the larger area fixed in round figures at 15 acres, the total value of the land to the south would be $450. This amount will be allowed as representing the damages to the southern part of the property and as arising from the want of a perfect crossing—including also all damages resulting from the road, given to reach the southern part of the property, which subjects the owner to delay and involves a longer distance to travel.

The question of railway damages which might arise from the present expropriation, such as widening the existing severance, has not been much pressed, except in so far as the new road is concerned. Indeed, in the present case this element only comes up as a question of degree as compared with the time before the expropriation. There was before the present expropriation a railway already crossing this property, severing it in two. The owners of property over which, one railway has already obtained a right of way is, indeed, entitled to other and different damages from a second railway expropriating lands alongside the first, the property having already adjusted itself to the first invasion.[1]

In recapitulation, the assessment of the compensation will be as follows:—

(1) Re Billings and C. N. Ont. Ry. Co., 15 D.L.R., 918; 16 Can. Ry. Cas., 375, and 29 Ont. L.R. 608.

For the land taken, i.e., 7.14 acres at $500. inclusive of all general damages as above mentioned	$ 3,570.00
Specific damages to the southern part of the property as well as those arising from the Crossing and the new road	450.00
	$ 4,020.00
To this amount will be added 10 per cent for the compulsory tak ng	402.00
	$ 4,422.00

Therefore, there will be judgment as follows, viz.:—

1st. The lands expropriated herein are declared vested in the Crown since the 7th April, 1906, when possession of the same was taken.

2nd. The compensation for the land and real property so expropriated and for all damages resulting from the expropriation are hereby fixed at the sum of $4,422. with the interest thereon from the 7th April, 1906, to the date hereof.

3rd. The defendant is further declared entitled to the road and railway crossing described and referred to in paragraphs 4 and 8 of the information herein.

4th. The defendant Roy is entitled to recover from and be paid by the plaintiff the said sum of $4,422. with interest as above mentioned, and is further declared entitled to the road and crossing also hereinbefore referred to, upon giving to the Crown a good and sufficient title, free from all hypothecs, mortgages, charges and incumbrances whatsoever, the whole in full satisfaction for the land taken and all damages resulting from the said expropriation.

Failing the said defendant to give a release of the hypothecs mentioned in this case, the moneys will be

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paid over to the hypothecary creditors in satisfaction of the said hypothecs and interest, and the defendant will then be entitled to be paid the balance, if any, of the said compensation moneys after satisfying the said hypothecs.

5th. The costs will follow the event.

Judgment accordingly.

Solicitors for plaintiff: *Pentland, Stuart, Gravel & Thompson.*

Solicitors for defendants: *Francoeur, Vien & Theriault.*