HIS MAJESTY THE KING.....PLAINTIFF;

v.

L. J. CYR ET AL.....DEFENDANTS.

1929
Aug. 20-21-22.
Sept. 30.

Expropriation—Valuation—Sales in vicinity—Market price

Held,—That where the evidence of value relied upon had reference to a number of sales in the vicinity, only a few of which were for cash, others were never perfected, and others again had been completely abandoned; and further where it is established that there are large areas of land available for building purposes in the vicinity at reasonable prices; such sales must be considered in such a case as made under special circumstances and at prices that cannot establish a market value and cannot be taken as a criterion of the value of property.

2. That the price paid for a small lot cannot be said to establish the market price of large areas, to wit: 200,000 sq. ft.

3. Where the only witness heard for the defence on the question of value was the owner himself, the weight to be given such testimony—as a jury would consider it—is to be measured by the consideration that, as an interested owner, his mind would lean or incline from a state of indifference to a particular object, due to the unhappy upbuild of human nature, and will amount to little more than a definite statement of the maximum figure of his contention.

INFORMATION by the Attorney General of Canada to have certain lands expropriated for purposes of a public work of Canada valued by the Court.

The action was tried before the Honourable Mr. Justice Audette at Edmundston, N.B.

I. C. Rand, K.C., and *M. A. Kelly* for plaintiff.

P. J. Hughes, K.C., and *Pius Michaud* for defendants.

The facts are stated in the reasons for judgment.

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AUDETTE J., now (September 30, 1929), delivered judgment.

This is an information exhibited by the Attorney General of Canada, whereby it appears, among other things, that certain lands, therein described, belonging to the defendants, were expropriated by the plaintiff, for the "purpose of a public work of Canada, to wit"; a right of way of a spur of the Canadian National "Railways", at Edmundston, N.B., by depositing on the 9th November, 1920, and on the 21st January, 1921, in the Registry Office, plans and descriptions of the said parcels of land.

The area taken, as set forth, both in the Information and on the plan is, more or less (5·364) five and three hundred and sixty-four thousands acres.

The plaintiff, by the Information, offers the sum of $9,504.79, after tendering the same; and the defendants, by their statement in defence, claim the sum of $35,678.10.

At the opening of the trial, the defendant Eva L. Cyr, the wife of the other defendant, was added party defendant being duly represented by counsel. The mortgage mentioned in the Information has merged with the interest of both defendants, and in the result it has disappeared and the compensation moneys become payable to both defendants.

Accompanied by counsel for the respective parties, I had, on the first day of the trial the advantage of viewing and visiting the *locus in quo*.

The land expropriated is situate east and back of Victoria street, in the town of Edmundston, and lies practically in a ravine or coulée, running from north to south, wherein runs an old watercourse, with water now appearing stagnant but which formerly was running from the Madawaska river to the St. John river. The waters of the Madawaska formerly ran under a bridge, on Victoria street to this watercourse; but this bridge has disappeared and its location has been filled. Since the erection of the dam, on the Madawaska river, which was completed in June, 1918, before the expropriation, the water seeps or percolates from the river through the street, into the cellars of the houses on Victoria street and thence to the watercourse. There is also a sewer which runs into this watercourse, and it was there at the time of the expropriation and necessitated the

construction of a culvert in the course of the filling of the land after expropriation to an average height of eight feet.

This seepage and this sewer now form stagnant water, polluted by the sewer, creating a stench which as some witnesses testified, renders part of the defendants' land very objectionable and unfit for residential purpose.

The watercourse formerly ran freely from the Madawaska river into the St. John river; but it is now so encumbered that it stops and loses its flow. Witness Rhinelander says there is nothing to prevent the water discharging in the River St. John. Undoubtedly, when all litigations have come to an end, this will be remedied.

The land taken rises at the north adjoining the C.P.R. fence and slopes down south towards the watercourse, forming a swamp, until it rises again on the south to a plateau.

On behalf of the defendants, the defendant Levite J. Cyr, was the only witness heard on the question of the value of land taken which he values of 15 cents a square foot.

However, the weight of this testimony as it is generally appreciated—and as a jury would consider it—is to be measured by the consideration that as an interested owner, his mind will lean or incline from a state of indifference to a particular object, all due perhaps to the unhappy upbuild of our human nature. And in the result his testimony will amount to little more than a definite statement of the maximum figure of his contention. No witness but himself ventured such a high valuation.

The remainder of the defendants' witnesses were persons who had apparently purchased lots from him at prices ranging from 15 cents, 12 cents and 10 cents a foot, according to their location. Three of these lots adjoining the C.P.R. fence were sold at 15 cents. Some of these sales were abandoned, because they could not think of building in the vicinity of the offensive smell emanating from the watercourse.

Mention was also made of what has been called the Thibaudeau option; but the evidence in this respect is uncertain and uncorroborated, therefore, obviously of no value.

The award upon the expropriation for the C.P.R. cannot be of any help in this case, as it rests wholly upon the evidence adduced in that case.

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The defendant purchased this land in 1909, subdivided it on paper at that date and sold but a few lots up to the time of the expropriation in 1920,—most of the sales were made in 1920. Were most of these sales, apparent or real, made, as suggested at trial, with the design to establish a market price? The vendor did not provide actual roads to his purchasers; they would have to be made at their expense.

Considering that only a few of these sales were cash and that the balance is not to this day perfected, and some of them have been completely abandoned, and furthermore that there are in Edmundston, large areas of land available for building purposes at reasonable prices, it results that such sales were made under special circumstances and at prices that are not established as market prices and that, therefore, such sales cannot be taken as a criterion of the value of the property. *Belanger* v. *The King* (1); *The King* v. *Coleman* (2).

Moreover, the price paid for a small lot cannot be said to establish the market price of large areas of over 200,000 square feet. A larger price is paid proportionately for smaller lot than for such large area, that is commercially well known.

On behalf of the Crown, the following witnesses testified respecting the value of the land taken as follows: Edmond Giroux (a stranger to the locality), $\frac{2}{3}$ of the property at 5 cents a square foot and the balance at $100 an acre. Martin Denis, $\frac{2}{3}$ at 5 cents and $\frac{1}{3}$ at 3 cents; Willie E. Albert, at $8,000; C. Rhinelander, at $5,000; and Edmund Evans at $2,000 to $2,500.

This parcel of land so expropriated forms part of a much larger area, the whole of which was bought by the defendant on the 22nd February, 1909, for the sum of $10,000, with a proviso that if the sum of $16,000 or any other amount above $10,000 be offered for the therein mentioned property, the vendors and the purchaser would decide upon a sale of the same,—a majority of two to decide and the amount above $10,000 was to be divided equally.

It is true that Edmundston has grown and developed since 1909, but not to the extent dreamt of by the defend-

(1) (1920) 19 Ex. C.R. 423. (2) (1926) Ex. C.R. 121.

ants, and the prospective potentialities of the land taken must be measured at the time of the expropriation—*The King* v. *Trudel* (1).

Moreover, where, as in this case, an inflated value is placed upon the property as related to a prospective use to which it might be applied, but only upon the expenditure of large sums of money which would make it, without it, unprofitable and impracticable as a commercial or industrial proposition, such valuation is not a proper basis of the market value of the property. *Belanger* v. *The King* (2).

Now, the land taken is obviously not farming land, it is not fit for desirable residential purposes and its value must be approached as if in the class of industrials, reckoning however that it could only be utilized upon the expenditure of large sums of moneys which necessarily goes to the depreciation of the price thereof.

The placing of the property in the industrial class seems accepted by the Crown's counsel and moreover acquiesced in by the offer of $9,504.79, a value it could not have if approached as farm land.

For the consideration to which I have just adverted, I have come to the conclusion to fix the compensation by placing a value, per acreage, working from north—from the C.P.R. fence—towards south—towards the watercourse, and to allow as follows:—

For the 1st acre, more or less, from north to south.....	$4,000
" 2nd " " " " "	3,000
" 3rd " " " " "	1,500
" 4th " " " " "	1,000
" 5th " " " " "	1,000
To which must be added the 364/1000 at the same rate as the fifth acre making in all.....	364
	$10,864

Therefore there will be judgment as follows:—

1st. The lands expropriated herein are declared vested in the Crown as of the 9th November, 1920.

2nd. The compensation for the lands so taken and for all damages whatsoever resulting from the expropriation is hereby fixed at the sum of $10,864 with interest thereon at the rate of five per cent per annum from the 9th November, 1920, to the date hereof.

(1) (1913) 49 S.C.R. 501. (2) (1920) 19 Ex. C.R. 423.

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3rd. The defendants, upon giving to the Crown a good and satisfactory title free from all mortgages, charges and encumbrances whatsoever are entitled to be paid the said sum of $10,864 with interest thereon, as above mentioned.

4th. The defendants are further entitled to their costs against the Crown.

Judgment accordingly.