

1915
June 12.

IN THE EXCHEQUER COURT OF CANADA.

THE KING,

PLAINTIFF;

v.

MARGARET LYNCH,

DEFENDANT.

Expropriation—Second Invasion—Market Value—Potential Value—Compulsory Taking.

Held, That the owner of property over which one railway has already obtained a right of way is entitled to other and different damages from a second company expropriating land alongside the first, the property having already adjusted itself to the first invasion. (*Re Billings & Canadian Northern Ont. Ry. Co.*¹ referred to.)

2. That the owner of a property is entitled to get the market value of his land, estimated at the best use it can be put to, and taking all its prospective capabilities into consideration.

3. In valuing lands, subdivided into lots, situate in a small community, where a number of other subdivisions are on the market, the probability that the owner will have to wait years to sell, and then only receive the price in instalments, instead of as in expropriation, are matters to be considered.

4. That in case of compulsory taking, the usual ten per cent. is allowed.

¹ (1913), 15 D. L. R. 918; 16 Can. Ry. Cas. 375; 29 O. L. R. 608.

THIS is an information exhibited by the Attorney-General of Canada alleging that the Crown has expropriated certain lands for purposes of a Government Railway and praying to be declared owners and to have the same valued by this Court.

The trial came on before the Honorable Mr. Justice Audette at the city of Fredericton, N.B., on June 10, 11 and 12, 1915.

R. B. Hanson, K.C., for plaintiff;

F. B. Carvell, K.C., for defendant.

Judgment was rendered from the Bench, and reasons of the Judge state the facts.

AUDETTE, J. (June 12, 1915), delivered judgment.

Were I to reserve this case for further consideration, I do not think I would be in a better position to appreciate it than I am now with all the facts present in my memory and vividly impressed upon my mind.

I have had the advantage, accompanied by Counsel, of viewing this property and while I realize it is a desirable property, I also realize that it does not come in that class of property in which a gentleman of means would invest a large sum of money to make a home for himself. One cannot cast away from his mind that before the present expropriation, on one side of the property there was already a railway in full operation and at the back part, there were large industrial buildings that one would not desire to have next to a desirable private dwelling in which to invest a large sum of money, perhaps in excess of its market value, with the object of making a home with grounds and nice surroundings.

The question of railway damages to-day with respect to these lands is only one of degree, as compared to the time before the present expropriation, when there was already a railway, and there is now another, but closer to the buildings.

We have had the advantage to hear, as witness, a lady residing in this house who told us that she had just noticed the vibration made by the C.P.R. trains before she had come to give her testimony, and that she had heard them in a very distinct manner.

1915

THE KING
v.
MARGARET
LYNCH.

Reasons for
Judgment.

1915

THE KING
v.
MARGARET
LYNCH.
Reasons for
Judgment.

This property is injuriously affected by the C.P.R. and it is injuriously affected by the new railway. The owner of property from whom one railway has already expropriated a right of way is entitled to other and different damages from a second company expropriating lands alongside the lands taken in the first expropriation; the property having already adjusted itself to the first invasion. *Re Billings & C. N. Ontario Ry. Co.*¹

While I have to acknowledge that this property has a real and a high value, I cannot go to the extreme amounts that have been sworn to before me, and I may repeat here what I have already said in several cases. The owner of the property is entitled to get the market value of the land put to the best use it can be, taking all its prospective capabilities into consideration.

Approaching the consideration of the class of property within which it must be placed I may say that it was with some doubt at the opening, after hearing only part of the evidence, that I could feel justified in considering it as a property on the market subject to a subdivision. It has been approached in that manner by the Crown and it is certainly the best uses to which this property can eventually be put to. However, one must not overlook also, that in a small community like the present one of this locality, with already a number of sub-divisions on the market, this new one might practically glut the market and that it might take years before it could be sold. Placing it in this class of sub-divisions, I thought that the evidence of Mr. Mitchell was about

¹ (1913), 15 D. L. R. 918; 16 Can. Ry. Cas. 375; 29 O. L. R. 608.

right if worked upon that basis. He has divided the land into building lots, has put a fair value upon them and, if his figures are taken, the owner would realize in one day, the price of all these lands or lots as if they were sold at once without experiencing any delay, and without any expenditure of any kind in advertising and the like, for the purpose of getting their money by instalment or at different date. They would have at once the full use of the purchase price and they would have no taxes to pay. That mode, indeed, if fair, would also be most liberal.

I have figured out what this property, on such basis, should return and there is so little difference between Mr. Mitchell's figures at \$8,638 and mine, that I have accepted them although slightly larger. As that property is taken against the will of the owner, it is compulsorily taken, and *I think it would be a proper case to add the usual 10 per cent. viz., \$863.00, making in round figures the sum of \$9,500 with interest from the date of the expropriation, namely August 4, 1913, with the accrued interest.*

The whole compensation, capital and interest, would run up to over \$10,400.00.

Therefore, I think judgment should be entered as follows:

1st. The lands expropriated herein are declared vested in the Crown as of the dates of the respective takings.

2nd. The compensation is fixed at the sum of \$9,500.00 with interest thereon from August 4, 1913, to the date hereof. The défendant is entitled to re-

1915
THE KING
v.
MARGARET
LYNCH.
Reasons for
Judgment.

1915THE KING
v.
MARGARET
LYNCH.Reasons for
Judgment.

cover that amount upon giving a good and satisfactory title free from incumbrance.

3rd. The defendant is also entitled to his costs.

Judgment accordingly.

Solicitors for plaintiff: *Slipp and Hanson.*

Solicitors for defendant: *F. B. Carvell, K.C.*