IN THE EXCHEQUER COURT OF CANADA

1920

March 15.

IN THE MATTER OF THE PETITION OF RIGHT OF

PIERRE EDOUARD EMILE BÉLANGER,

NOTARY, OF THE CITY OF QUEBEC,

SUPPLIANT;

AND

HIS MAJESTY, THE KING,

RESPONDENT.

Expropriation—Title to land—Alienation of Public Domain—Power of King of France under French regime—Compensation—Inflated value.

The original title to the land in question dates back to the 10th March, 1626, under the hand of the Duc de Vantadour, on behalf of the King of France, which was subsequently revoked under an Edict of the King of France with all previous concessions, with the object of transferring such titles to La Compagnie de la Nouvelle France. This Company, however, on January 15th, 1637, conveyed the same lands, to the suppliant's representatives, which conveyance was on the 12th January, 1652, confirmed by a title by M. de Lauzon, then Governor of New France; and finally these primordial three grants were further confirmed on May 12th, 1678, by Louis XIV., King of France, granting total *amortissement* of the said land.

This title was attacked on the ground that it was beyond the right of a King of France to alienate the public domain under the *Ordonnance de Moulins* of February, 1566.

Held, That the power to alienate at that time, when the laws of the Princes were supreme, resided in the King of France who could in derogation of the said *Ordonnance de Moulins* thus alienate the public domain.

2. While the sale of property in the immediate neighborhood of the property expropriated is cogent evidence of the market value thereof, yet if such neighboring property has changed hands under special circumstances and at prices that are not established as market prices, such transfer of property cannot be taken as a criterion of the value of the property.

3. Where the value placed upon a property by certain witnesses is inflated in view of the uses to which it can be applied, but only upon the expenditure of very large sums of money which

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would make it unprofitable and impracticable as a commercial proposition, such valuation is not a proper basis of the market value of the property.

PETITION of Right to recover compensation from the Crown for certain lands taken on the shores of the St. Charles River near the City of Quebec.

The facts are stated in the reasons for judgment.

The case was tried at Quebec, on the 23rd, 24th, 25th and 26th days of February, 1920.

A. Marchand, K.C., and *Gordon Hyde,* K.C., for suppliant.

E. Lafleur, K.C., *E. Belleau,* K.C., and *W. B. Scott* for respondent.

Reasons for Judgment.

AUDETTE, J., (this 15th March, 1920) delivered judgment.

This matter now comes before the Court by way of a new trial under the hereinafter-mentioned circumstances and much I have said in my reasons for judgment touching the first trial has to be repeated here.

The suppliant, by his petition of right, and his reply to the amended statement in defence of the Crown, seeks to recover the sum of $800,085.65 (the same amount being still claimed even after the abandonment) as compensation for injurious affection to the land abandoned and returned to him since last trial, as well as for the value of certain lands expropriated from him by the Crown, on the 13th January, 1913, for the purposes of a public work of Canada, namely for the construction, maintenance and repair of the Harbour of Quebec, and the improvement of navigation in the River St. Charles, at Quebec.

This Court has already, on the 28th June, 1917, pronounced judgment in this case upon the pleadings as they originally stood[1] and that judgment having been appealed to the Supreme Court of Canada, that Court, on the 4th February, 1919, without expressing any opinion upon the merits of the case, ordered a new trial which has now come before this Court and upon which the present judgment is rendered.

Following the judgment of the Supreme Court of Canada ordering a new trial, the Crown, in pursuance of sec. 23 of the *Expropriation Act,* R.S.C. 1906, ch. 143, filed, on the 22nd March, 1919, in the Registry Office, a declaration whereby it abandoned 1,418,310 sq. ft. of the 1,863,599 sq. ft. of lot 560 expropriated in 1913, whereby these 1,418,310 sq. feet became revested in the said suppliant from that date.

As a result of such abandonment the Crown still expropriates, from the front of this lot 560—1,083 feet on a depth of 340 feet on the east and 500 feet on the west, thus taking in all from lot 560, 455,289 sq. feet, as shown on plan, Exhibit No. 1.

Furthermore the respondent also filed at trial, the following undertaking, with respect to the 445,289 sq. feet expropriated from lot 560, to wit:—

"UNDERTAKING ON BEHALF OF THE CROWN."

"The Attorney General of Canada, on behalf of "His Majesty, in the right of the Dominion of Can-"ada, being thereunto duly authorized by Order-"in-Council of the 18th February, 1920, undertakes "and consents that so far as concerns any matters "under the control of the Dominion Government the "suppliant and his successors in title may, without

[1](1917), 17 Can. Ex. C. R. 333, 42 D. L. R. 138.

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"further assurance or consent on behalf of His "Majesty, enjoy the same rights of access to and "egress from the portion of the property described "as No. 560 on the official cadastre of the Parish "of St. Roch North in the County of Quebec East, "Province of Quebec, referred to in the notice of "abandonment signed by the Honourable Frank B. "Carvel, on the 21st day of March, 1919, and col- "oured red on the plan annexed to the said aban- "donment, over the southerly boundary thereof, as "he previously had over the southerly boundary "of his property as it existed at the date of the "expropriation; and that the suppliant shall hence- "forth have the same right to erect and maintain "structures or works on the southerly boundary of "the portion of said lot so abandoned as he formerly "had to erect and maintain such structures or works "upon the former boundary along low water mark, "subject always to the provisions of the *Navigable "Waters Protection Act.*"

In the result the lands taken herein are composed of two different lots, to wit:—

Of part of lot 513, containing an area of.....		295,652 sq. ft.
the same as at the first trial, whereas by the original expropriation the whole of lot 560, containing an area of.....	1,863,599 sq. ft.	
had been expropriated, the Crown had since abandoned and returned to the suppliant.....	1,418,310 sq. ft.	
Thus leaving a balance of.....	445,289 sq. ft.	445,289 sq. ft.

Making the total area expropriated at this date..... 740,941 sq. ft.

for which the suppliant is still claiming the sum of $800,085.65 including a claim of damages for injurious affection to the part returned and revested in the suppliant.

The Crown denies the suppliant's title and makes no offer by its statement in defence; but declares that, if the suppliant proves title, a reasonable sum, ascertained under the provisions of *The Expropriation Act,* should be paid him for the value of the land taken and for damages, if any.

On this question of title, I cannot do better than embody herein what I have said in my judgment of the 28th June, 1917, that is to say:—

The original titles of concession of the lands in question go back to one of the first French regimes of our Colony.

The first title consists in letters-patent issued on the 10th March, 1626, by Henri de Levy, Duc de Vantadour, Lieutenant General de sa Majesté le Roi de France au Gouvernement de Languedoc, Vice-Roy de la Nouvelle France, whereby the following piece of land, called Seigneurie de Nôtre Dame des Anges, was granted to the Jesuits, viz.: "La quantité "de quatre lieues de terre tirant vers les montagnes "de l'ouest ou environ, scittuées partye sur la riv- "ière St. Charles, partye sur le grand fleuve St. "Laurent, d'une part bornées de la rivière nommée "Ste. Marie, qui se décharge dans le susdit grand "fleuve de St. Laurent, et de l'autre part, en montant "la rivière St. Charles, du second ruisseau qui est "au dessus de la petite rivière dite communement "Lairet, lesquels ruisseaux et la dite petite rivière

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"Lairet se perdent dans la dite rivière St. Charles,: "item nous leur avons donné et donnons comme une "pointe de terre avec tous les bois et *prairies* et "*toutes autres autres choses* contenues dans la dite "pointe scittuée, vis-à-vis de la dite rivière Lairet, "de l'autre coste de la rivière St. Charles, montant "vers les Pères Recoletz d'un coste et de l'autre "coste descendant dans le grand fleuve."

Subsequently thereto, by an *Edit* of the King of France, all concessions made were revoked with the object of transferring all such titles in La Compagnie de la Nouvelle-France. On the 15th January 1637, however, La Compagnie de la Nouvelle-France granted to the Jesuits the lands above described, confirming thereby the first grant of the Duc de Vantadour, including *"les bois, prez, lacs, etc."*

In compliance with an *ordonnance* of the 12th January, 1652, with respect to *"la confection d'un papier terrier contenant le dénombrement des "terres mouvantes, tant en fief qu'en roture,"*— Monsieur de Lauzon, conseillor ordinaire du Roi en ses conseils d'Etat et privé, Gouverneur et Lieutenant-Génèral pour Sa Majeste en la Nouvelle-France, étendue du fleuve St. Laurent, did, on the 17th January, 1652, again grant and confirm the previous grants of the lands in question, "mesme "les prez que la mer couvre et découvre a chaque "marée."

Then under a Royal *Edit et Ordonnance,* being an Arrêt du Conseil d'Etat du Roi, bearing date, at St. Germain-en Laye, the 12th May, 1678, the King of France, Louis XIV, granted total *amortissement* of the lands referred to in the above grants, with the object of removing any doubt as to the title granted

the Jesuits by the Duc de Vantadour, la Compagnie de la Nouvelle-France and le Sieur de Lauzon. This deed of *amortissement,* which was registered at Quebec, on the last day of October, 1679, also mentions in the description of the lands, *"les pres que la mer "couvre et découvre a chaque marée."*

It has been contended that all of these grants did not divest the Crown of its ownership in these foreshores and beds of navigable rivers which form part of the public domain, and which cannot be alienated; resting for this contention upon l'Ordonnance de Moulins, of February, 1566, by Charles IX, which is to be found in the Recueuil d'Edits et Ordonnances Royaux, by Neron and Girard, at p. 1099, whereby it is forbidden to alienate the public domain, except under the circumstances therein mentioned, but the present case does not come within such exception.

There can be no doubt that this doctrine has been the basis and foundation of the old public law in France. It was supported by the authors, and maintained by the courts down to the time of the Revolution, when the law governing the public domain was subjected to material modification. However, the old doctrine was followed by the Code Napoleon, art. 538, which afterward found its way in our art. 400, C.C.P. This law, however, was necessarily subject to easy modifications under the unlimited powers possessed by the King.

Then it must be said that a number of *Edits et Ordonnances* passed subsequent to the Ordonnance de Moulins were cited, whereby part of the public domain was allowed to be sold and alienated, and in some of these, the grant goes so far as to say that it thereby derogates to that effect, as much as need be,

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from all the laws, *ordonnances et coutumes* to the contrary.

And this right to alienate part of the public domain, by the King of France, has always been recognized by the Courts of France even subsequent to the *Edit* de Moulins.[1]

Authorities have also been found to the effect that this right has been recognized in France since the Revolution.[2]

And after the cession many laws were passed in Canada recognizing the validity of the grants made before 1760.[3]

After the Revolution, the authors assert that all these concessions became null under the provision of a law of l'Assemblée Nationale Constituante of 1789, which abolished all these grants. These grants were then abolished by a new law, because they were considered good legal grants, until such new law would decide to the contrary. But all French legislation of 1789, in fact all legislation since 1760, when Canada passed under the British flag, has no effect in Canada, not any more than the Code Napoleon has.

It is indeed, a somewhat strange position for the Crown to-day to take in denying the power of the King of France at the time the grant was made. No one, says Mr. Mignault, (now Mr. Justice Mignault)[4] would dream of contesting the original title of concessions, and it is the ancientness of these titles which dispensed them from registration.

[1] Merlin, Questions de droit—vol. 7, Vo. Rivage de la mer. Edits et Ordonnances, vol. 3, p. 122. Pièces et documents relatifs à la Tenure Seigneuriale, vol. 2, p. 126, 128—p. 567.

[2] Sirey (Periodique) 1841, 1 p. 260—Dalloz, vo. Domaine Public, 29,30—Dalloz vo. Organization Maritime, 751.

[3] 47 Geo. III., ch. 12; 4 Geo. IV., ch. 18; 7 Geo. IV., ch. 11.

[4] Droit Civil Canadien, vol. 9, p. 195.

However, to properly appreciate the grant in question and more especially the last one, which covers them all, and is under the signature and seal of the great King Louis XIV, one must go back to that heroic period. It was the period of great and autocratic politics, when justice in its mundane quality resided in the acts of the Prince; when there was no other justice than the Prince's justice. The King, at that time was all power. He could one day legislate by such *Edit and Ordonnance* as he saw fit, and the following day he could at his pleasure, derogate therefrom by another piece of arbitrary legislation. He was the source and foundation of power; and, indeed well he knew he was possessed of this absolute power, when the famous words, said to have fallen from his lips, were pronounced by him, "*L'Etat, c'est moi.*" He did then mark, as if with the engraver's tool, upon the table of the laws of France, the very character of his power. The monarchy existing in France in the 17th century was a royal monarchy and not a seignorial monarchy—and the monarchs wielded sovereign power, independent of *les Etats de la nation.*[1]

Even if the will of the King of France, either by special Grant or by General *Edits,* did clash with the *Edits* of his predecessors on the throne, there was no way to reproach him from a legal standpoint, whilst he might perhaps be criticized from a political view. The King was the sovereign master of the Kingdom in an absolute and unlimited monarchy. Parliament during his reign even became nothing but a court of justice losing its right of *remonstrance.*

[1] Furgole 10.

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The Seignorial Courts created under 18 Vic. ch. 3, whose great weight and authority, to which an almost authoritative sanction has been given by statute, commanding also the highest respect by reason by the composition of the tribunal, have passed upon the very point in question, recognizing the validity of the seignorial titles from the King of France. Answering the 27th question submitted to them, that Court answered it, as follows; to wit:—

"3. Quant aux droits des Seigneurs sur les grèves "des fleuves et rivières navigables; dans ceux de "ces fleuves et rivières qui étaient sujets au flux et "reflux de la mer, ces droits, sur l'espace couvert "et découvert par les marées, resultaient d'un octroi "exprès dans leurs titres: et, sans un tel octroi, "s'étendaient jusqu'a la ligne de haute marée seule-"ment.

"4. Les seigneurs avaient le droit de percevoir "des profits des lods et ventes sur les mutations des "grèves situées entre haute et basse marée sur le "fleuve St. Laurent, ou dans les autres rivières nav-"igables, lors qu'ayant droit à ces grèves par leurs "titres, ainsi qu'il a été dit, ils les avaient concedées, "et ce, dans les mêmes cas, ou ces profits seraient "accrus sur d'autres ventes."[1]

Then the *Act of Commutation* granted to the suppliant or his predecessors in title, together with the receipts for the rents and seignorial dues or of their commuted capital, have recognized his right of ownership and made his title incommutable.[2]

These lands which had been granted to the Jesuits and which still belonged to the Jesuits in 1800 were then confiscated by the British Crown.

[1] See Seignorial Court Decisions, p. 69a.

[2] See 3 Geo. IV., (1822), (Imp.) ch. 119 secs. 31 and 32; 8 Vic. (1844), ch. 42; and R. S. Q. 1909, arts. 7277, 7278, 7282.

Then in 1838 the administration of the Jesuits' Estate was confided to Commissioner Stewart; but this Commissioner had nothing to do with the lands which had already left the hands of the Jesuits.

Moreover, the Jesuits' Estates, under art. 1587, of the R.S.Q. 1909, have been declared to be in the control of the Department of Lands and Forests. Therefore the original title has been recognized, and all grants, deeds, and titles given by the Department, or those acting under it, must be considered good and valid.

See also Journals of the Legislative Assembly, 1823-24, Appendix "Y".

Commissioner Stewart has granted and sold some of the land from the Jesuits' Estate to the Hotel Dieu, who in turn sold to the suppliant or his predessor in title.

I hereby find, following the decision of the Seignorial Court, and for the reasons above mentioned, that the original grant from Louis XIV, as well as the other three primordial grants, constitute a good title with full force and effect. And I further find that all titles, deeds or grants made by Commissioner Stewart, who was invested with full power, are also good and effective titles, and more especially after the Crown has taken the rents and revenues derived from such grants, waiving thereby the formality of the deed.[1]

Then, with the object of removing all doubts, the Statute of 6 Geo. V, ch. 17 passed by the Legislature of Quebec, in 1916, with retroactive effect, has positively declared that the Crown has the right and power to alienate the beds and banks of navigable rivers and lakes, the bed of the sea, the sea-shore

[1] *Peterson v. The Queen*, (1889), 2 Can. Ex. C. R. 67.

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and land reclaimed from the sea, comprised within the said territory and forming part of the public domain.[1] This Act removes all doubt, if any could exist, and makes it clear that all previous grants, whatever may have been the system of Government, are good and have full force and effect.

Only a few words need be said with respect to the contention that these lands formed part of the Harbour of Quebec, and thus became vested in His Majesty, as representing the Dominion of Canada. By sec. 2 of 22 Vict., 1858, ch. 32, an Act to provide for the improvement and management of the Harbour of Quebec, the lands forming part of the Jesuits' Estate are excluded from the harbour. By the same Act, the right of all the riparian proprietors are further duly saved and recognized. See also 62-63 Vict., 1899, ch. 34, sec. 6, sub-sec. (a) to sub-sec. 2 thereof, whereby acquired rights are saved and acknowledged. Therefore the lands in question do not form part of the Harbour of Quebec.

Having disposed of the two great objections raised against the suppliant's title, it becomes unnecessary to enter here into the long catena of title-deeds under which the suppliant claims. It will be sufficient to find the suppliant has proven his title, and is entitled to recover the value of the land expropriated from him.

COMPENSATION

Coming now to the question of compensation, a summary review of the evidence on the question of value and damages becomes of interest.

On behalf of the suppliant the following witnesses were heard upon these questions of value and dam-

[1] See also *Commrs. Havre Quebec v. Turgeon and Atty.-Gen. P.Q.*, decided the 24th June, 1910.—Unreported.

ages: C. E. Taschereau, Joseph Collier, Dr. M. J. Mooney, Octave Bedard and Eugene Lamontagne.

C. E. Taschereau—This witness, a notary public practising in Quebec, prefaces his valuation by citing a number of sales on *terra firma,* at Hedleyville or Limoilou, at figures ranging from 64 cents to $2.27; but of small building lots varying in size from 40 and 30 feet by 60 feet which bear no relation to be compared with lots 513 and 560. He also cited sales of vacant beach lots, on the north side of the River St. Charles, from 1910 to 1915, at figures ranging from 24 cents, 38 cents, 50 cents to $1.25 and on the Quebec side as high as $1.94 and relied on the sale to the Government of lot 514, at 23 cents, in June, 1914. Then after stating that lot 513 might be used for private residences, shops and warehouses and 560 for ship building and maritime purposes, and that both lots, which were not utilized in 1913, were both covered by water in monthly high tides, he placed a value on lot 513 at 35 cents—equal to $103,478.20, and upon lot 560 at 30 cents, and added 10 cents a foot on the abandoned part of 560, because of the taking of the front part, the invasion by construction on the piece taken and the sluiceway as well as from the closing of access at the back by the corporation of the city;—the total of his valuation amounting to $251,248.00.

Joseph Collier says that lots 513, 514 and 560 are of about the same value and that in 1913 wharves could be built on 513 and 560. He values lot 513, the front part, for a depth of 300 feet at 60 cents and the back at 30 cents, making for that lot $143,685. And coming to lot 560, adhering now to his former valuation for the whole lot, he placed a value of 45 cents upon the front part for a depth of

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300 feet; and for the balance at the back at 25 cents. However, he added that since the Crown now only had a part, at the front, of lot 560, he placed a value of 60 cents upon such part and considered that the balance thereof which is worth 25 cents and which is now abandoned and returned is thereby damaged or depreciated by 50%, that is 12½ cents a foot.

In the result he explains that if lot 560 were all expropriated that he would allow

324,900 ft. @ .45—$146,205.00
and 1,538,699 ft. @ .25— 384,677.50

and that the amount payable should be $530,882.50

Then since the Crown only takes a portion of 560, he now values it as follows:

450,000 (but the right amount should be 455,289, giving $267,173.40) @ .60	$270,000
and 12½ cents as depreciation on the balance of 1,413,599 (which should be in exact figures 1,418,310 @ 12½—$177,288.75, making in all $444,462.15)	176,699
	$446.699

If this mode of arriving at such valuation is analysed it will be seen that although, when valuing the whole lot, the witness allows 45 cents a foot for a depth of 300, and that the Crown actually retain of that lot a depth from the front on the east side of 340 feet and on the western side a depth of 500 it becomes difficult, if possible, to reconcile such valuation, considering that when the Crown would take the whole lot 560, according to him, it would have to pay $530,882.50 for the 1,863,559 feet, while it

would still have to pay, according to his own figures $446,699 for this lot 560, after having returned 1,413,559 ft. (or to be accurate 1,418,310), that is when the Crown retains less than a quarter of the whole lot. This reasoning is obviously difficult to reconcile with sound logic.

In addition to this fantastic price, he says that before the property can be used, $50,000 might be expended for wharves and $25,000 for filling, bringing the whole amount between half a million and $600,000 that would have to be expended upon this lot before it could be in a fit state of development, remaining however, without deep water wharves.

Dr. Malcolm J. Mooney says that lots 513, 514 and 560 are all of the same value and he values lot 513 at 30 to 40 cents a foot and lot 560 at 30 cents and contends that by the abandonment the balance of lot 560 is depreciated by 50%, and in arriving at that conclusion he assumes that the access by water has been taken away, contending further that before 1913 these two lots might be utilized for industrial purposes, by river or railway, for instance as Pulp or Paper Mill sites, and that a revetement wall at a cost of $8.00 or $9.00 a foot and filling at $5.00 to $6.00 a foot would have to be done; but in the result without deep water wharves. He valued

the whole of lot 560 at	$559,079.70
and lot 513 at	88,695.00
In all	$647,774.70

Octave Bedard, barber, owner of the Chateau Frontenac stand, who as land agent has sold lots at Limoilou for $1,500,000 with the experience of two transactions in beach lots, values the beach lots on

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the River St. Charles, from 1910 to 1912 (about equal value in 1913) at 40 cents to 50 cents, from lot 514, going up to Drouin Bridge. Adding that near Ste. Anne Bridge lots are worth less.

Eugene Lamontagne values beach lots, in 1913, at 80 cents to $1.00, on River St. Charles, west of Ste. Anne Bridge. The lots immediately to the East of that Bridge would be cheaper. He could not see much difference between lots 513, 514 and 560. He values lot 513 and 560 at 30 cents to 35 cents and contends it would be a paying proposition to purchase at half a million dollars and further incur the necessary expenses to improve and develop the lots.

On behalf of the Crown, the following witnesses were heard upon the question of the value of the land and on the cost of development of these lots: Albert Forward, Edward A. Evans, Athol Tremblay, Sir William Price and Alfred Gravel.

Albert Forward, was the chief engineer of Messrs. Quinlan and Robertson, who were the contractors with the Government for the works on the St. Charles River. As a result of these works being abandoned in June, 1917, Quinlan and Robertson's plant became idle, so they entered into a contract with the Imperial Munition Board to build four vessels on lot 513 which involved the expense of $9,000 for 3 ways, $2,800 for a wooden wall and 58,000 yards of filling at 50 cents—$29,000, in all an expense of $40,800, having the advantage of having a dredge at that place and being allowed to take the material from the river.

This witness says that lot 560 is too low a site to be used in its present state for any purposes. It

would have to be raised at the cost of a crib work and filling amounting to $236,935

together with the filling of the lot, 620,000 yards at 50 cents, provided the material could be taken from the river 310,000

In all $546,935

Lot 513 would require a concrete wall of 800 feet, at the cost of $100 a foot ..... $ 80,000
and the filling 95,000 yards @ 50 cents..... 47,500

$127,500

Edward A. Evans, civil engineer. He was in charge of the building of the Ste. Anne Bridge on the River St. Charles and he says in the site of the bridge he encountered a depth of 60 feet of quicksand. He would not advise the building of wharves on lot 560, when there are so many better available lots for that purpose. However, to make a wharf for small vessels on 560 it would cost....$355,552
Filling outside of the wharf 252,889

$608,441

Not a practical commercial proposition.

He says that lot 560 was sold in 1888 for $5,000, or ¼ cent a foot and that such price was really less than the value of the wharf and crib on the property then. These wharves were sold in 1891 to McLaughlin. The property has not, to his knowledge, been used since 1889.

He would prefer the Turgeon-Dussault lots (582a and 583) to 560 because the foundation of the latter

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is on rock, is firmer ground. He said 582a and 583 were paid ½ a cent a foot. And he adds that no sane man would spend $608,441 to fit 560 for building lots.

Lot 513 not so costly to develop. In 1913, on the front and west it would require a retaining wall.

The crib work would cost	$ 9,600
Filling	38,750
	$48,350

Not practical for commercial purposes. Filling with garbage, as suggested, not advisable if to be used for industrial purpose. Abandonment has no detrimental effect on balance of lot 560.

Athol Tremblay, is a surveyor who was chief land agent for the Transcontinental from 1909 to 1912. He says that lot 560 cannot be utilized without being filled, and with a protection wall. Contends that lot 560 has no more value than lots 582a and 583, the Dussault-Turgeon lots, which were sold at 3-5 of 3-4 of a cent, or about half a cent as shown by Exhibit No. 9 and at ¾ of a cent in 1912, as shown by Exhibit No. 10.

He values lot 560 at $15,000 to $20,000. The sum of $15,000 would represent about ¾ of a cent, and $20,000 slightly more than one cent a foot. He does not consider that lot 560 should be used for building lots, when there are so many lots in the neighbourhood. It is not useful for commercial purposes because the filling would be too costly.

He values lot 513 at 5 cents a foot—$14,782.60. He considers that lots 440 etc., mentioned by witnesses Taschereau higher up the river and says that the

perspective of the Government work on the St. Charles River had the effect of creating a fever of speculation in the neighbourhood.

He considers that the abandonment in no way can depreciate the balance of 560, especially is it so with the undertaking filed by the Crown.

Sir William Price, who is the president of Price Brothers Ltd., was Chairman of the Quebec Harbour Commission for 1912 or 1913 to 1915 and as such has intimate knowledge of the harbour. He considers lot 560 of very small value for commercial purposes, because it could not be so used without filling and building wharves which would be too costly. No private company would undertake it. No deep water wharves available there. The Quebec Harbour Board purchased in March, 1913, a much more valuable property at Indian Cove, including large wharves, at 2 cents a foot, as appears by Exhibit No. 13. He considers there is not much difference in value between lot 560 and the Turgeon-Dussault lots 582a and 583.

He values lot 560 at ½ a cent a foot and lot 513 at 2 cents a foot.

Alfred Gravel, Managing Director of the Gravel Mills, at Levis, who has been one of the Harbour Commissioners since 1912, states that lot 560 is prohibitive, no good, for commercial purpose in view of the necessarily large expenditure it would require before it could be used. He was on the Harbour Commission when they bought (Exhibit 13) the Indian Cove property at 2 cents a foot, including a wharf of 1800 feet in length, which is open all winter, and with deep water accommodation. Contends the Turgeon-Dussault lots are of about same value as 560.

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He values lot 560 at ½ cent a foot and lot 513 at 2 to 3 cents a foot. He does not consider that the abandonment, coupled with the undertaking, has had a detrimental effect on lot 560.

The lands in question herein were purchased by the suppliant between 1900 and 1910 for the sum of $18,165.32 and were practically yielding no revenue save the small amount shewn in Exhibit No. 7. These lots lie in the estuary of the River St. Charles and were in 1913 nothing but a stretch of muddy soil over sand, the land being entirely covered with water at monthly high tide, the property having been idle for years and years.

These properties cannot be used in the state in which they are. To be made useful they would have to be filled and protected by wharves or crib works, at a cost, according to witness Forward, in respect of lot 560 of $546,935 and with respect to lot 513, of $127,500, and according to witness Evans with respect to lot 560, at a cost of $608,441 and lot 513 at a cost of $48,350, yet in face of such statement some so called expert witnesses came and swore it would pay to fill and develop these lots at such tremendous costs to make of them either building lots or industrial sites. These wharves would not even be deep water wharves, but would have access to deep water only to the height of the water brought in by the tide. No sane man would expend such sums on these lots to use them for such purposes when better lands are available all around under normal and reasonable conditions.

It is true there is evidence that several beach lots changed hands at rather high figures, between Ste. Anne and Dorchester bridges where the land is

somewhat more valuable than below Ste. Anne bridge; but, as was said, at the time these lots changed hands, a hectic inflation in prices prevailed in that locality in view of the prospective works to be undertaken by the Crown.

It is true lot 514 which lies between lots 513 and 560, was purchased by the Crown at 23 cents in June, 1914; but under such special circumstances that will take that transaction out of the ordinary course of business and prevent using such a price as a criterion to determine the value of the lots in question. Indeed, as appears clearly, both by the deed itself (Exhibit 78) and from the testimony of witness Lefebvre, it having become known that lot 514 was required by the Crown, speculators took hold of it, option after option, to the number of five, linking into one another, and even under fictitious names were executed with the object of inflating the price of the lot. The very evening the first option was obtained at 23 cents a second one was out for 50 cents a foot. The Crown, through its officers, having been made aware of what was going on, and anxious to stop the property from passing into the hands of such speculators, went over to the owners, bought the property in face of this skein of options and undertook, by the deed itself, to indemnify the owners against any trouble which might be met or coming from the parties to whom they had consented these options. Visionary wealth at the expense of the Crown was in that transaction seen at a distance but not realized. However, the Crown's hand was forced and the property had to be bought at that high figure.

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These lots 513 and 560 were of very little value to the owner. And it is now settled law that in assessing compensation for property taken under compulsory powers it is not proper to consider as part of the market value to the owner, such value as land taken may have to the party expropriating when viewed as an integral part of the proposed work or undertaking. But the proper basis for compensation is the amount for which such land could have been sold, had the present scheme carried on by the Crown not been in evidence, but with the possibility that the Crown or some company or person might obtain those powers and carry on the scheme. And in the present instance, who, outside of the Crown, could undertake such colossal works? *The Cedar Rapids Co. v. Lacoste*[1]; *Sydney v. North Eastern Ry. Co.*[2]

The scheme must be eliminated, notwithstanding works had been started, subject however, to what has just been said. *Fraser v. City of Fraserville.*[3]

When Parliament gives compulsory powers and provides that compensation shall be made to the person from whom property is taken, for the loss he sustains, it is intended he shall be compensated to the extent of his loss; and his loss shall be tested by what was the value of the property to him, not by what will be its value to the party acquiring it. *Stebbing v. Metropolitan Board of Works.*[4]

The policy and object of the *Expropriation Act* is to enable the Court to compensate the owner but not to penalize or oppress the expropriating party. The Court must guard against fostering speculation

1 16 D. L. R. 168, [1914] A. C. 569.
2 [1914] 3 K.B. 629.
3 34 D. L. R. 211, [1917] A. C. 187.
4 (1870), L. R. 6 Q. B. 37.

in expropriation matters, and must not encourage the making of extravagant claims and more especially must not be carried away by subtle arguments of real estate speculators or so called expert witnesses and thus render the execution of public works impossible or prohibitive. While the owner must be amply compensated in that he is no poorer after the expropriation, there is no reason to charge the public exchequer with exorbitant compensation built upon imaginary or speculative basis.

The properties that offer the closest relation and similarity with lot 560 and are most apposite are certainly, what has been called during trial the Turgeon-Dussault properties, lots 582a and 583, composed in part of *terra firma* and in part of a beach lot to the extent of 67 arpents and which was sold in 1909 at about half a cent a foot and in 1912 at about three-quarters of a cent. Then there is also that fine property with wharves and building with deep water wharves at Indian Cove, bought at 2 cents a foot by the Quebec Harbour Commissioners.

At the original trial there was no oral evidence that could justify the Court to allow a valuation at less than 10 cents a foot, for the land taken, while at this new trial the Court is absolutely untrammelled in that respect, having evidence ranging from 60 cents down to ½ a cent a foot.

Coming to the question of abandonment, I find, under the conflicting evidence in that respect, that with the undertaking filed by the Crown, and as above recited in full, that the returned piece or parcel of property is clearly not injured and has not been depreciated in value by such abandonment and its consequences. It is with some reluctance I have,

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under the evidence, to come to such conclusion because there would be ample justification for thinking that part of 560 would have been benefited by the public works in question, for reasons too obvious. Among others, there will be a deep water channel coming up from the St. Lawrence to the guide pier; moreover under the undertaking the Crown cannot build on that part of 560 which it retains thus placing the present front of 560 in a better position than it was before the expropriation. Can it be assumed that when such opinion was expressed by some of the witnesses it was predicated by the idea that the advantages might be offset by the disadvantages?

We have the advantage in this case, to be guided to a certain extent, as a determining element by the sales of lots 582a and 583, and the Indian Cove property, which applied with some flexibility, taking into consideration, as much as is known of the circumstances of the sales coupled in relation to 560 which is closer inshore than 582a and 583, become very cogent evidence and afford a very good test in arriving at a fair compensation herein. *Dodge v. The King;*[1] *Re Fitzpatrick* and *Town of New Liskeard.*[2]

The suppliant endeavors to hold the Crown liable for the closing of the streets by the municipality on the northern part of lot 560 which is abandoned and returned to him. But away back in 1911, as will appear by Exhibit 6, the Municipality of the City of Quebec openly manifested its intention of closing those streets, as will appear by the Resolution of the Council whereby it entered into contractual obligation with the C.N.Ry. for doing so. That

1 (1906), 38 Can. S.C.R. 149.
2 (1909), 13 O. W. R. 806.

was long before the date of the expropriation. Then after the C. N. Ry. had complied with its part of the agreement, the City of Quebec, on the 12th November, 1915, passed a by-law closing the streets from that date in compliance with its resolution of 1911. The Crown is in no way liable in that respect, there is no privity between the Crown and suppliant in that respect. If the suppliant has any claim against anyone in respect of the closing of the streets, it will obviously be against those who did it. *Bell v. Corporation of Quebec.*[1]

Taking into account and consideration the fact of such abandonment or revesting of part of lot 560, in connection with all the other circumstances of the case, in estimating or assessing the amount of compensation to be paid to the suppliant, I have come to the conclusion to allow 5 cents a foot for lot 513 ..... $14,782.60

and for lot 560, the front only being taken the most valuable part, I will allow 2 cents 8,905.78

Making in all the sum of $23,688.38

with interest thereon from the 13th January, 1913, to the date hereof. Between the years 1900 and 1910 the suppliant bought these two lots composed of over two million feet of land for $18,000 and he is now getting $23,688.38 and interest for 740,941 feet thereof.

Therefore, there will be judgment as follows, to wit:

1. The lands expropriated herein are declared vested in the Crown as of the 13th January, 1913.

[1] (1879), 5 App. Cas. 84.

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2. The compensation for the land so taken and for all damages whatsoever, if any, resulting from the expropriation and all circumstances flowing therefrom, is hereby fixed at the sum of $23,688.38, with interest thereon from the 13th January, 1913, to the date hereof.

3. The suppliant is entitled to recover the said sum of $23,688.38, with interest as above mentioned, upon giving to the Crown a good and satisfactory title free from all hypothecs, mortgages, ground rents and all encumbrances whatsoever. Failing the suppliant to discharge the ground rents, the capital of the same may be discharged by the Crown out of the compensation moneys and the balance thereof paid over to the suppliant.

4. The suppliant is further entitled to recover all costs occasioned by the expropriation.