

BETWEEN :

HIS MAJESTY THE KING, ON THE
 INFORMATION OF THE ATTORNEY-GEN-
 ERAL FOR THE DOMINION OF CANADA, PLAINTIFF;

1913
 March 10.

AND

ALFRED OLIVIER FALARDEAU
 AND CONSTANT NAPOLEON
 FALARDEAU.....DEFENDANTS.

Expropriation—Water lots—Prospective value—Remoteness at date of expropriation—Jurisdiction to assess damages limited to area on plan and description filed.

The Crown had expropriated for the purposes of the National Transcontinental Railway a discarded lumber cove near the City of Quebec, with all the buildings and wharves erected thereon. In the days of wooden ships, and when the lumber trade was flourishing at its best in Quebec, the property in question was worth a great deal. After that time the property had very much depreciated in value, but the defendants relied upon the prospective capabilities of the property for docking purposes when steamers in the St. Lawrence trade became too large to proceed up the river to the Port of Montreal.

Held, that such a rise in value of the property was too contingent and remote at the date of expropriation to be regarded as an element of the market value.

2. The court has no jurisdiction to entertain a claim for the value of property unless the same falls within the boundaries of the area expropriated as it actually appears on the plan and description deposited in the Registry Office.

THIS was an information filed by the Attorney-General for the Dominion of Canada for the expropriation of certain lands required for the construction of the National Transcontinental Railway, a public work of Canada.

The facts are stated in the reasons for judgment.

January 17th and February 18th, 1913.

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

1913
THE KING
v.
FALARDEAU.

Reasons for
Judgment.

E. J. Flynn, K.C., and *J. E. Chapleau*, appeared for the plaintiff; and *E. Baillargeon*, for the defendants.

AUDETTE, J., now (March 10th, 1913), delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that the Crown, under the authority of 3 Ed. VII. Ch. 71, expropriated certain lands, described in the amended information herein, for the purpose of the construction of the National Transcontinental Railway, a public work of Canada.

A plan and description of a strip of land, part of lot No. 260, representing an area of 148,540 square feet, (as established by witness Tremblay, although the area mentioned in the information is 328,552) were, on the 15th day of February, A.D. 1910, deposited with the Registrar of Deeds for the County of Quebec, P.Q. A second plan and description of the balance of the said lot No. 260, representing an additional area of 638,460 square feet, were also, on the 12th day of September, 1912, deposited with the said Registrar of Deeds,—and a further plan, with full description by metes and bounds of lot No. 260, which is all taken and expropriated by the Crown, were also on the 16th day of January, A.D. 1913, deposited with the said Registrar of Deeds. This last plan which was deposited with the object of correcting all previous erroneous descriptions, shows a total area of the land taken as 780,000 square feet; but by agreement, both parties admitting at the trial that the total area actually expropriated was 787,000 square feet, Mr. Tremblay, the Surveyor who signs the descriptions of the said lands on behalf of the National Transcontinental

Railway, corrected the plan filed as Exhibit No. 3, in accordance with the last mentioned figures. The Registry should also be amended accordingly to avoid any future difficulties or complications.

Therefore under the amended information the Crown expropriated 787,000 square feet for which it offers the sum of \$39,000.

The defendants, by their amended plea, aver that the amount of \$39,000 tendered by the amended information, is insufficient and claim the sum of \$217,261.97 with interest and costs.

The defendants are claiming the value of the two piers which are built in deep water opposite the property in question. The Crown by the present expropriation proceedings is only taking lot No. 260, as shown on plan filed herein as Exhibit No. 3,—the said lot lying between the letters A, B, C, D and E. Therefore, as the piers in question do not form part of the present expropriation and have not been expropriated, the Court has no jurisdiction to entertain a claim for the same in the present action.

Three hypothecs have been registered against the property: The first one on the 1st May, 1902, in favour of J. Brown, for \$2,500; the second one on the 23rd April, 1910, in favor of J. H. Gignac, for \$9,000, which was afterwards transferred to R. L. Ellis; the third hypothec was created on the 7th July, 1911, for \$15,000 in favour of R. L. Ellis,—the latter, on the 11th December, 1912, transferring these two hypothecs for \$9,000 and \$15,000 respectively, in favour of the Bank of British North America.

It is admitted by both parties that the property is incumbered by these three hypothecs amounting to the total sum of \$26,500 and that when paying the compensation money herein, the Crown will retain in

1913
THE KING
v.
FALARDEAU.
Reasons for
Judgment.

1913
 THE KING
 v.
 FALARDEAU.
 REASONS FOR
 Judgment.

its hands the sum of \$30,000 to cover the capital and interest upon the said hypothecs, up to the time when it is shown by the defendants that the said hypothecs have been paid and cancelled upon the registry, in a manner that will give to the Crown a title free from all hypothecs and charges upon the said property.

The question of the defendant's title to the land in question has been discussed at the trial with the result that leave was given them to supplement the deeds on record at that time by establishing their title beyond 1894, and to show how the property passed out of the hands of the Crown. However, subsequently thereto, namely on the 6th of March, 1903, the parties filed a consent by which the defendants' title is admitted for the reasons therein mentioned.

On behalf of the defendants were heard the following witnesses, viz:—Constant N. Falardeau, Joseph Elzéar Poitras, Théodore Leclerc, Jean Baptiste Morisset, Eugène Trudel, Joseph H. Gignac, François X. Huot, Alphonse Auger, and Edmund T. Nesbitt.

The following is a summary of the testimony of each of the said witnesses:

Constant N. Falardeau, is one of the defendant firm, carrying on the business of coal and cord-wood upon the property in question, as an ancillary to their Quebec business where they have a wharf. The property in question was bought in 1894 for the sum of \$1,000, including all the buildings, wharves and the Piers, and they have been in possession ever since.

There are two wharves upon the property and they are respectively marked "A" and "B" on the plan filed herein as Defendant's Exhibit "D". The wharf marked "B," is utilized for their coal business. Their business at Sillery consists in yearly handling between 1,700 to 1,800 tons of coal, and about 150 cords of

wood. He contends that the Quebec merchant charges about \$1.50 per ton to deliver coal at either St. Foye or Sillery, while he can do it for between 65 to 70 cents, and he can deliver a cord of wood for seventy-five cents less than if it had to be drawn from Quebec. His coal, however, delivered at Sillery costs him two cents a ton more than delivered at Quebec. There is no difference with respect to the cord-wood either delivered at Quebec or Sillery. They also rent since five or six years at \$35 a year the right to fish in front of their property, down to low-water mark, and this witness contends there is now no other place at Sillery where they can carry on their business. A coal merchant at Quebec, he contends, realizes a profit of fifty to seventy-five cents per ton of coal, and between \$1.00 to \$1.25 per cord of wood,—to which should be added his special profit due to cartage at Sillery. The witness being recalled said they did not use wharf "A," but used wharf "B," for their coal business. The forge was used by the fishermen,—the cottage was rented at \$15.00 per month, and all the other buildings were used for the purposes of his business.

Joseph Elzéar Poitras, is the surveyor who made the plan filed herein as Exhibit "D," and proved it.

Théodore Leclerc, is an insurance agent dealing in real estate, who has had some experience in valuing property. He values the land in question at from 18 to 20 cents a square foot, exclusive of the buildings and wharves, on the basis of its real value to-day,—assuming it will be worth more later on when the large ocean steamers, too large to go to Montreal, will have to stop at Quebec. For the present value he takes in to consideration the different works under construction, such as the Quebec Bridge which will bring to Quebec the

1913

THE KING
v.

FALARDEAU.

Reasons for
Judgment.

1913
 THE KING
 v.
 FALARDEAU.,
 Reasons for
 Judgment.

several railways coming to the south of Quebec on the Lévis side, as well as the Transcontinental which links the West to the East, a work in contemplation since 1903. The Quebec Bridge would give it the value he names. He does not know of any mutation of property in the vicinity, but contends that the prospective capabilities of the property come from the works under construction.

Jean Baptiste Morisset, is an insurance agent, who is acquainted with the value of property at Quebec, without making a specialty of this latter business. He contends that the property is especially well situated to have more than an ordinary value, and abstraction being made of the advantage derived from the Transcontinental,—taking the construction of the Quebec Bridge in consideration which is the construction which gives it its value,—he places an approximate value of twenty-five cents a square foot upon the property, exclusive of the buildings and wharves. He knows of no sale of property in the neighbourhood, but if the Quebec Bridge were not built it would decrease by three-fourths the value of the property. However, the property is in the Port of Quebec and is bound to benefit it by the development of the Port.

Eugene Trudel is a master carter who corroborates C. N. Falardeau's testimony respecting the cost of drawing coal and cord-wood.

Joseph H. Gignac, a contractor and manufacturer, as well as lumber merchant, at the head of a large industry at Quebec, who has had considerable works under construction, and who has lived at Sillery for a number of years, has studied architecture and is well up in making estimates for buildings, values the two wharves and the eight buildings upon the property, as follows, viz:—

1. He values the Forge at.....	\$304.56	1913
2. He values the scale-house at \$256.88 and the machinery, \$130.00.....	386.88	THE KING- v. FALARDEAU.
3. He values the office.....	88.80	Reasons for Judgment.
4. He values the two lodgings.....	1,697.40	
5. He values the small shed.....	64.84	
6. He values stable and lean-to at.....	200.62	
7. He values cottage.....	3,472.40	
8. He values large shed.....	207.40	
9. He values 554 feet of fence on the street side.....	221.60	
10. He values 548 feet of fence on the river side.....	64.98	
11. He values 132 feet of fence in lattice around the house and the garden....	39.60	
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	\$6,749.08	

This witness has already built wharves, and taking the measurements made by Mr. Poitras, the surveyor already heard in this case, he values the wharf marked "A" on the Plan "D,"—the one closer to Quebec at.....\$20,089.31

He says that wharf is an open crib-work wharf, of pine, with the two top rows in a dilapidated state, which would have to be removed. The timber is of better quality than one can get in our day, although old. He values that wharf on a basis of \$2.30 per cubic yard. He values the wharf marked "B" on the plan exhibit "D,"—that is the wharf further up the river,—at the sum of..... 12,625.00

\$32,714.31

He contends that the wharf "B" was repaired seven or eight years ago, and that it is in a good state of

1913
THE KING
v.
FALARDEAU.
Reasons for
Judgment.

repair now. It is a full timbered wharf of pine, and he values it on a basis of \$3.25 per cubic yard.

Coming to the question of the value of the land itself, he says that the property, Spencer Cove, situated about one arpent and a half outside of the city limits, and three-quarters of a mile from the "inhabited section," began to increase in value in 1903 and 1904, and values it in September 1912, and even sometime before, at fifteen cents a square foot. He considers that Spencer Cove is deeper than the Dobell property, the latter being, in his estimation, 25 to 30 per cent. less valuable. However, coming from Notre Dame de la Garde to Spencer Cove, all the properties are tumbling down and in a ruinous state; but property has increased in value since there was any question of the Quebec Bridge, the Transcontinental, the Canadian Northern and all the railways of the south shore crossing over to Quebec by the prospective bridge. He says that in September last, had he had ready money, he would have given \$75,000 for the property, in consideration of its prospective capabilities. Further in his evidence, he, however, adds that in buying at that price, he would not have paid the value, because the property before long will be worth from \$400,000. to \$500,000. on account of it being the best part of the Port of Quebec, believing that the development of the harbour will be made towards Sillery. The witness further contends that, allowing an estimated valuation upon the buildings, there were sales made in the vicinity at 30 and 34 cents a foot,—the deeds for these sales are filed as exhibits "F" and "G". However, the evidence of Altheod Tremblay upon this subject somewhat confuses this valuation, the area not being clearly established.

François X. Huot, is the foreman at Gignac, Ltd., a carpenter with experience in making estimates in his particular branch, he values the buildings upon the property, as follows, viz:—

1913
 THE KING
 v.
 FALARDEAU.
 Reasons for
 Judgment.

1. The forge.....		\$270.00
2. The scale.....	\$211.00	
The machinery.....	100.00	311.00
3. The office.....		96.00
4. The lodgings.....		1,887.00
5. The small shed.....		82.86
6. The stables.....		210.82
7. The cottage.....		3,540.00
8. The large shed.....		120.00
9. The fence on the highway side.....		166.20
10. The fence at the back.....		72.20
11. The fence of the garden.....		33.00
		<hr/>
		\$6,789.08

In arriving at this valuation, at the sum of \$6,789.08, he says he assessed at the actual value, taking the deterioration into consideration.

He further values the house and the shed on the Auger property at \$860.40, and on the Madden property at \$586.48.

Alphonse Auger, 69 years of age, is a ship-carpenter, who has already built wharves. He says that wharf "A" is in a good state of repair with the exception of two or three of the top tiers. It was constructed of the best quality of timber, and it could be used to-day for the foundation of a wharf. He estimates that it would cost \$3.50 a cubic yard, to build a new wharf like it, with the timber of the present day. This is crib-work wharf.

Respecting wharf "B" which is full timbered he estimates such cost at \$3.75 a cubic yard.

1913
 THE KING
 v.
 FALARDEAU.

REASONS FOR
 JUDGMENT.

Edmund T. Nesbitt, a contractor, who has already built wharves, and who has general experience in buildings, arrives at the following valuation, viz:—

1. The forge.....	\$304.56
2. The scale.....	\$256.88
Machinery.....	130.00.....
	386.88
3. The office.....	88.80
4. The two lodgings.....	1,697.40
5. The small shed.....	64.80
6. The stables and lean-to.....	200.64
7. The cottage.....	3,472.40
8. The large shed.....	207.40
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	\$6,422.88

The witness did not value the fences, and placed a value of \$20,089.31 on Wharf "A", (crib-wharf) on a basis of \$2.30 a cubic yard, and on wharf "B" (full timber) the sum of \$12,625.00 on a basis of \$3.25 a cubic yard. Then he values the land in September, 1912, without taking in consideration the increased value given to it by the Transcontinental, at fifteen cents a square foot. He bases his valuation of this land upon its prospective capabilities consisting in the fact that the railway passes there, that the Quebec Bridge will draw there all the railways to get to deep water and the shipping of grain. Adding that if his anticipation is not realized that the land will be worth very little. Since the timber business has gone from Quebec, these lands for three-quarters of a mile from lot No. 260 towards Quebec, present an aspect of ruin and depreciation. However, of late years the defendants have been carrying on business upon these premises. With respect to the buildings, he says he would not like to say they could be sold for the price at which he has valued them. He is unable to give the

commercial market value of this property, otherwise than by adding up together all the above figures. He further contends that when all the works he has mentioned are established, the property will be worth two hundred, three hundred and five hundred per cent. more

1913
THE KING
v.
FALARDEAU.
Reasons for
Judgment.

This closes the defendants' evidence.

On behalf of the Crown the following witnesses were heard, viz:—

Edmund Giroux, Joseph de S. Bossé, James G. Scott, George E. Tanguay, Alfred C. Dobell and Altheod Tremblay.

Edmund Giroux, is an insurance agent, who since 1907 has been both arbitrator and expert witness in expropriation matters. He values the land at five cents a square foot, taking in consideration that the adjoining land was at the time under option at that price, and he considered that wharf "A" should be valued upon the basis of \$1.62 per cubic yard, and wharf "B" upon the basis of \$2.70 per cubic yard. He values the whole property at \$62,000 allowing five cents per foot, the balance being for the buildings and the wharves. He considers the sum of \$62,000 being the value of the property, if on the market as a whole. (Si l'ensemble de la propriété était mise sur le marché). In arriving at this valuation, he takes into consideration the option at five cents a foot upon the adjoining property, the development of property since 1904 derived from the Quebec Bridge, the Terminal Railway, the perspective of the Transcontinental in a future more or less distant. Adding if Quebec is benefited by these works, the development will be from the water front,—and without taking into consideration the prospective value, he says the property was worth more in 1904 than in 1894. In the result the valuation

1918
THE KING
v.
FALARDEAU.
Reasons for
Judgment.

of this property means that the 787,000 square feet,
 at five cents a foot is worth.....\$ 39,350.00
 and he allows for the wharves, buildings, etc. 22,650.00
 Making the sum total of.....\$ 62,000.00

Joseph de S. Bossé, testifies an option was obtained for the Dorchester Electric Co. from Mr. Ross, of the property immediately adjoining Falardeau's at 5^{1/10} cents per square foot,—the total area being of 2,300,000 square feet with three or four wharves and an old house upon the premises. He believes negotiations began in 1910,—he saw Mr. Ross in 1911,—and the option at \$130,000 was an open one without any delay mentioned therein. Although he thought they would have made a good bargain at that price, it was refused for two reasons. First, because Mr. Ross could not give title, with covenant of guaranty, for 832,292 feet, which were below low water-mark, extending out to the Harbour Commissioners' line shewn on plan Exhibit No. 3. And secondly, because the property was outside the city limits, and under our arrangement with the city we had to establish ourselves within the limit of the city.

James G. Scott, is a railway man of 30 years' experience who states he did value the property before but not to any great extent. He values the land at five cents a square foot,—and the whole property with the two piers, at.....\$76,000.00
 Deducting the value of the piers, which he assesses at.....14,174.00

there remains the sum of.....\$61,826.00 representing the value of the whole property. He values the two wharves upon the same basis as the previous witness. In arriving at his valuation he took in consideration the Quebec Bridge, the Quebec Ter-

minal Railway, and the further fact that the property was presently operated by the defendants, but he did not take the Transcontinental in consideration and he believes that when the latter is in operation it will be worth more than what he values it at, and that something should be added therefor to his valuation.

1913
 THE KING
 v.
 FALARDEAU.
 Reasons for
 Judgment.

George E. Tanguay, is an architect, who has had 30 years' experience in valuing real estate, having been both arbitrator and expert witness in such business. He values the two wharves under the same basis as the two previous witnesses,—allowing for wharf "A" the sum of \$ 8,159.94 and for wharf "B" 9,814.00

\$17,973.94

He values the land at five cents a square foot and the whole of the property expropriated at \$62,234.00. He values the cottage at \$2,583., finding 21,528 cubic feet, having taken such measurement from the surface of the soil outside, without going inside, down in the cellar, if there is a cellar. There is here some divergence as to the measurement taken by the witness and witness Gignac,—however, the witness has added ten per cent. to the value of the buildings, in arriving at his valuation. In arriving at his valuation he has taken into consideration the fact that a railway is to pass upon the property together with the Quebec Bridge, and the advantage derived from the Transcontinental, because he believes that without the latter he would not give more than half his valuation.

Alfred C. Dobell, is forty years old, and has been domiciled in Quebec all his life, and says that as long as he can remember, the timber trade has gradually decreased in that locality and the value of the land went down in the same ratio. Excepting the Falardeau

1913
THE KING
v.
FALARDEAU.
Reasons for
Judgment.

property, there is not one going concern from Point-a-Pizeau down to the city; the houses have fallen down in ruins; and the booms have been taken away. Since 1904 the Quebec Bridge and the Quebec Terminal Railway have increased the value of the property,—otherwise it would be without any value. He sold to the Transcontinental, as part of his father's estate, a property of 703,474 feet, about three-quarters to one mile closer to the centre of the City than the Falardeau property, at twelve cents a foot, including the wharves and buildings, remaining owner of the small strip on the other side of the road. There were upon this property two long deep water wharves of 80 and 100 feet respectively,—and a third one not going to deep water,—together with three or four dwelling houses and four sheds,—and he adds that the houses and sheds were in good condition. This property is Cadastral No. 167 of Sillery, and now No. 2526 of Champlain Ward. He considers that the property, had longer and better wharves than the Falardeau property, and was closer to the City and was worth eight cents more per foot than the Falardeau property. He also sold to the Transcontinental the property next to their own, closer to the City—the Bassano property—for \$45,000; but he says, had it not been for the Transcontinental he would never have had that price. It contained 231,120 feet, had two or three dwelling houses upon it and three large deep-water wharves, as explained by witness Tremblay. He contends that it is a better property than that of Falardeau, notwithstanding Falardeau's property is being exploited for his trade, and that his wharf is in a better condition. There are more wharves on the Bassano property than on Falardeau's and there was also a ship-yard upon the former property.

Altheod Tremblay, who was recalled, gave measurements respecting the wharves, and the shores on the Bassano and Dobell properties, and with respect to the Auger and Dombroski properties already expropriated.

Thomas H. McNeil, is Secretary-Treasurer of Sillery and says that the municipal valuation of the property of Falardeau & Co. is \$4,300.

This concludes the evidence.

This 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 in consideration any prospective capabilities or value it may obtain within the reasonably near future. Applying this reasoning to the present case, the first and after all the only question which must be answered is, what is the market value at the date of the expropriation, of this old discarded lumber cove, with all the buildings and wharves erected thereon, taking in consideration its prospective capabilities within a reasonably near future. Some of the witnesses have spoken of the prospective capabilities and have mentioned as going to increase the value of the Falardeau property, the prospect that there will be large docks upon the property to which will be moored large steamers which will be unable to go to Montreal. Suffice it to say that such matters are but contingencies and are too remote at the date of the expropriation to be made an element of compensation.

The property was bought as a whole in 1894 for the sum of \$1,000,—this sum covering the land, the buildings and the wharves, and also the two piers. A first hypothec of \$2,000 was however created upon the property in 1902,—a second one for \$9,000 in 1910,—and a third one for \$15,000 in 1911,—and

1913
THE KING
v.
FALARDEAU.
Reasons for
Judgment.

1913
THE KING
v.
FALARDEAU.
 ———
Reasons for
Judgment.
 ———

they would go to show that the property had, at these respective dates, increased in value to something more than it was worth in 1894. It is well to say that in the days of wooden ships, and when the lumber trade was flourishing at its best in Quebec, this property commanded a high price, and was worth a good deal of money. Then in 1894 it had about gone down to its lowest level,—and at that period, for a number of years, there was hardly any market and no demand for this class of property in that neighbourhood. The market started to rise when the question of the Quebec, Bridge, the Terminal Railway and the Transcontinental was mooted.

However, inasmuch as this property had a price as a whole in 1894, taking into consideration its prospective capabilities and potentialities, it must also have a market value as a whole at the date of the expropriation without being tied down to the abstract calculations respecting the wharves and other buildings, which must however be given some consideration on arriving at a final valuation. To pursue such a course would necessarily lead one to fanciful valuations which would not give us the true state of the market. In arriving at the purchase price of 1894, it is obvious that this abstract mode of calculating at so many cubic yards of wharves, and so many cubic feet of buildings, at a given price, was not resorted to; because both the wharves and the buildings, at their abstract value as distinguished from their market value were worth ever so much more in 1894 than they were in 1912. These wharves and buildings were of great value,—had their full value, when they were built for the lumber trade,—but when that trade had disappeared their market value also practically disappeared,—subject to such secondary or subsidiary

uses as they could be put to. It is true that one of the wharves, after being repaired, had been used for the last few years in the small coal business carried on by the defendants as ancillary to their Quebec business; but its value, as well as that of the other wharf, cannot be arrived at by an enquiry into what new wharves built at the present time would cost. The real test is the market value of such wharves in the state of repair in which they actually were at the date of the expropriation and upon the property in question.

Now there can be no doubt, and it is well established by the evidence, that for three-quarters of a mile between the property in question and Quebec, the aspect which presents itself is but a state of desolation, the properties being abandoned, and the buildings have either fallen down or are falling in ruins. The buildings upon the present property are used to some purpose. We are told that the buildings, excepting the cottage which is rented and the forge which is used by the fishermen, are used for the purpose of the defendant's coal and cord-wood business; but here again we must not overlook the fact that these wharves and buildings were not all necessary for the defendants' business and that they can only have a relative value,—a value that must be taken into consideration in arriving at a valuation as a whole, of the property in question, with all the surrounding circumstances. A wharf built on a farm in the backwoods, or at a place where it is not needed, and which cannot be used for any reasonable business or purposes flowing from the property upon which it is erected, cannot have its abstract value—its market value might only be, the value of what is left of good timber, after deducting the cost of labour to take it to pieces and draw it away. Is not the true view in such expropriation

1913
 THE KING
 v.
 FALARDEAU.
 —
 Reasons for
 Judgment.
 —

1913
 THE KING
 v.
 FALARDEAU.
 Reasons for
 Judgment.

to take all the circumstances into consideration in arriving at a market value for the property as a whole? (*The King v. Kendall*, (1), confirmed on appeal to the Supreme Court of Canada (2); *Manning v. Lowell* (3); *Moulton v. Newburyport Water Co.* (4).)

In the result, reducing the valuation of the witnesses into figures, it is found that Leclerc's valuation, at 19 cents a foot for the land—to which Gignac's valuation for the wharves and buildings is added, would give us the total sum of \$188,493.39. Morisset's valuation under similar process,—he valuing the land at 25 cents,—would give a total of \$236,213.39. Gignac's valuation, working out his own figures, would give \$157,513.39 with Nesbitt following at \$157,886.27. And for the Crown we have Giroux at \$62,000.00, Scott at \$61,826.00, to which should be added any benefit or advantage derived from the Transcontinental, at the date of the expropriation and Tanguay at \$62,234.00. The Crown's valuation is practically a valuation at eight cents a foot, including the wharves and buildings. The Dobell property was sold at twelve cents a foot—the Bassano property was sold at a little over nineteen cents a foot, and in both cases including buildings and wharves which were in better condition,—and the wharves were, with one exception, deep-water wharves of much more value than those of the Falardeau property, and the properties being in the city limits and about three-quarters to one mile closer to the centre of the city. The Ross property, immediately adjoining Falardeau's property, was offered at 5 $\frac{2}{3}$ cents per foot, including three or four wharves and an old house.

The Crown's witnesses proceeded also upon a wrong basis in arriving at the valuation of the buildings

(1) 14 Ex. C. R. 81.
 (2) Oct. 29th, 1912.

(3) 173 Mass. 103.
 (4) 137 Mass. 163, 167.

and wharves for the reasons already mentioned, with the result, however, that their valuation is at eight cents a foot, inclusive of the buildings and wharves. The option upon the adjoining property, that is the Ross property at $5\frac{2}{3}$ cents, is said to have been taken into account in valuing the present property, but it seems to have been overlooked that these $5\frac{2}{3}$ cents included the land and the erections thereon.

On behalf of the defendants their best witness Gignac, who is a thorough business man, cannot get rid of the right view to be taken in such a valuation. Indeed when left to himself he comes out with the statement that in September, 1912, had he had ready money, he would have given \$75,000 for the property in consideration of its prospective capabilities. On cross-examination, however, he is made to qualify the statement by adding that in buying at that price he would not have paid the value, because the property before long will be worth, from \$400,000 to \$500,000 by reason of being in the best part of the Port of Quebec, believing that the development of the Harbour will be made towards Sillery. Is not the true result of the analysis of this statement, that the property in 1912 in the view of this witness was worth \$75,000.00 because of such remote prospective capabilities, too distant, however, to be coupled with the true valuation, such as would at a distant period give it a much higher value?

The fallacy of the assessment of the wharves and buildings is too manifest to be dealt with any further.

If the Ross property had, at that time, a market value of $5\frac{2}{3}$ cents per foot, with all erections thereon, why should the Falardeau property immediately adjoining be worth more than six cents a foot, with its wharves and buildings? The assessment of the present

1913
THE KING
v.
FALARDEAU:
Reasons for
Judgment.

1913
 THE KING
 v.
 FALARDEAU.
 Reasons for
 Judgment.

property must be measured by its market value as a whole. And while certain wharves and buildings erected thereon do in a certain degree increase its potential value, the court cannot take as a decisive basis the abstract valuation of such buildings and wharves in arriving at a true valuation of the property as a whole, possessing a value which is entire and indivisible.

Taking all the circumstances into consideration, the condition of the property in the neighbourhood, and all the legal elements of compensation whatsoever involved in this case, the Court is of opinion that eight cents a foot for the land taken, inclusive of the value of the buildings and wharves, is a fair and most liberal compensation to the defendants for their property, including all damages whatsoever resulting from the expropriation; to which should be added ten per cent for compulsory taking viz:—

787,000 square feet at 8cts.....	\$62,960.00
Add 10 p.c.....	6,296.00
	<hr/>
	\$69,256.00

As this property was used by the defendants for the purposes of their trade it was to some extent a going concern

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

1st. The lands expropriated herein, with all erections thereon, are declared vested in the Crown from the date of the expropriation.

2nd. The defendants are entitled to recover from His Majesty the King, upon giving to the Crown a good and sufficient title, including a release of the mortgages amounting to \$26,500 and interest upon the property—the sum of \$69,256.00 with interest at five per centum

per annum, upon the sum of \$13,071.52 from the 15th day of February, A.D. 1910, and upon the sum of \$56,184.48 from the 12th day of September, A.D. 1912, to the date hereof. The whole in full satisfaction for the property so taken and all damages resulting from the said expropriation. Failing by the defendants to give the release of the said hypothecs, the moneys will be paid to the hypothecary creditors in satisfaction of the said hypothecs and interest, and the defendants will then be entitled to be paid the balance of the compensation money after satisfying the said hypothecs.

3rd. The registry must also be amended to comply with the statement and corrections made upon the plan of expropriation, in a manner that will show upon the registry that the whole of the property taken amounts to 787,000 square feet, and not the quantity now stated upon the said registry.

4th. The defendants are also entitled to the costs of the action after taxation thereof.

Judgment accordingly.

Solicitor for the plaintiff: *L. A. Cannon.*

Solicitors for the defendants: *Belleau, Belleau, Bail-
largeon, Belleau & Alleyn.*

1913
THE KING
v.
FALARDEAU.
Reasons for
Judgment.