BETWEEN:

HIS MAJESTY THE KING UPON THE INFORMATION OF THE ATTORNEY-GENERAL OF CANADA } PLAINTIFF;

1913
Aug. 29.

AND

HALBERTRAM HECTOR BRADBURN AND JOHN TAYLOR WEBB..... } DEFENDANTS(1)

Public Harbour—Navigable Waters—Water Lots—Set-Off—Increased value of remaining lands by reason of public work.

Proceedings by the Crown for the expropriation of certain lands bordering on the Kaministiquia River at Fort William, Ont., were taken with a view to the widening of the channel of the river. In carrying out the works, a road-allowance which intervened between the lands taken and the water of the river was expropriated leaving the lands with a frontage on the river subsequently widened.

Held, that the advantage to the balance of the lands equalized any damage to the land owners over and above the amounts offered as compensation by the government.

(2) Water lots had been granted after Confederation in the river by the Province of Ontario. The question arose as to the compensation to be paid for these water lots.

Held, that the waters of the river were navigable waters within the statute (R.S. 1907, cap. 115) from bank to bank, and that these water lots could not be built upon by the owners thereof without the assent of the Dominion authorities.

(3) The contention was raised on the part of the Crown that the waters in question formed part of a public harbour as defined by the Confederation Act.

Held, that, upon the facts, they did not form part of such public harbour.

THIS was one of twelve informations exhibited by His Majesty's Attorney-General for Canada for the expropriation of certain lands required for improving navigation at Fort William, Ont.

EDITOR'S NOTE:—(1) There were some twelve cases in all arising out of expropriations for the same public purpose.

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The facts are fully stated in the reasons for judgment.

The cases were heard at Fort William on the 19th, 20th, 21st, 23rd, 24th, 25th, 26th, 27th and 28th days of January 1911, and at Winnipeg on the 9th and 10th days of May, 1913.

W. A. Dowler, K.C., *W. McBrady* and *W.S. Edwards* for the plaintiff.

I. Pitblado, K.C., *F. R. Morris* and *W. L. Morton* for the defendants.

CASSELS, J., now (August 29th, 1913) delivered judgment:

There were twelve cases tried before me, arising out of three or four expropriations on the part of the Government, of lands on what might be called the south bank of the Kaministiquia and the east bank of the Mission River. The course of the Kaministiquia is not directly east and west, but, for the sake of brevity, I refer to it as the south bank; it is, in other words, the right bank.

In 1906 the Government approved of a plan for the widening of the Kaministiquia River. The intention then was to widen this river, so as to have a channel of about 400 feet in width. The depth of the river was to be, according to this first plan, about 17½ to 18 feet. Between the Mission River and Thunder Bay on the east are situate two islands, known as islands numbers one and two. The McKellar River divides the islands one and two. The Mission River is the westerly boundary of island number two. In order to carry out the work, it became necessary to expropriate certain lands on islands one and two. The first informations were to have the compensation determined for these lands so expropriated. Later

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on I will have to deal with each case in order. At present I am merely giving an outline of the facts connected with the cases. In front of all the lands on the Kaministiquia River— and I may also say on the Mission River—there was a road allowance of 66 feet in width. This road allowance was between the lands of the different land owners and the rivers Kaministiquia and Mission. The lands of the various claimants were bounded by this road allowance. By the expropriation in question, the road allowance was taken by the Government for the purpose of their works, and thereby the various owners, who, up to that time, had no riparian rights, became owners of land fronting on the rivers. The intervention of the road allowance, prior to the expropriation thereof, prevented any of the owners who are claiming compensation from having any riparian rights. (1)

The first expropriation was on the 14th September, 1907, and this is the time at which the compensation to the various owners under the first expropriation has to be ascertained. Mr. Temple was the engineer in charge of the works under the first expropriation. He was succeeded on the 19th May, 1907 by Mr. Merrick.

On the 31st January, 1908 it was decided by the Government that the River Kaministiquia should be further widened so as to give a width to the river of 500 feet. It was also proposed to deepen the channel of the river, so as to give a depth of 25 feet. At the same time it was decided to widen and dredge the Mission River, so as to give a width to the river of 500 feet, with a depth of 25 feet. This latter river runs out of the Kaministiquia and empties into Thunder Bay about a little over two miles from where

(1) See *Giles* v. *Campbell*, (1876) 19 Gr, 226; *Cockburn* v. *Eager*, (1872) 24 Gr, 412.

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it flows from the Kaministiquia. Instructions were given Mr. Merrick, as I have stated, on the 21st January, 1908, and plans for the second enlargement were approved of by Order in Council in November of 1908. The effect of this further expropriation required the taking of additional lands from the various owners, and plans were fyled in pursuance of the Statute in most cases on the 12th May, 1909. The exact dates I will mention when I come to deal with the individual cases. The third expropriation relates to certain water lots, two on the Kaministiquia River, one owned by Rochon and the other owned by Dr. Hamilton. There was also a water lot on the Mission River owned by Dr. Hamilton. Apparently when the first expropriation took place, the engineer was not aware of the existence of these water lots. The date of the expropriation of the water lots in question is the 10th of September, 1908. The water lot on the Mission River was expropriated prior to the plan for the widening of the Mission River being approved, of, but, as Mr. Merrick states, he had no doubt that the plans for the widening of the Mission River would be approved, and, with a view to the carrying out of the work, when the plan was approved of, he caused a plan to be registered for the expropriation of the water lot on the Mission River.

A few facts of general application to all these cases may be mentioned. In 1905 the Grand Trunk Railway obtained a grant of 1,600 acres. These lands were bounded on the East by the Mission River, and on the north by the Kaministiquia River. In the evidence it was generally referred to as if the lands in question were acquired by the Grand Trunk Pacific; in point of fact, they were acquired by the Grand Trunk Railway. A spur line connects the

main line of the Grand Trunk Pacific Railway with these lands on the Mission River. The object of acquiring the lands in question was in order that terminals of the Grand Trunk Pacific should be located on this 1600 acres of land. It was also desired that industries should be fostered in connection with these terminals, and at the present time, and at the time of the trial, several industrial buildings have been erected on this particular land. It is important to have this fact in mind for two reasons: first it was obvious—and it is so stated by some of the witnesses—that when the Grand Trunk located their terminals, the Mission River would have to be dredged, so as to permit of navigation for large steamers: secondly, it made it clear that the destination of islands numbers one and two was for industrial purposes. This fact, I think, is incontrovertible. In some of the evidence stress is laid on the fact that island properties one and two were suitable for first class residential purposes, and an attempted value is sought to be placed upon some of the lands, as if they should be treated in that light. The greater part of island number one was, at the time of the first expropriation, owned by the Canadian Pacific Railway Company. While I think portions of the lands on islands numbers one and two may be suited for residential purposes, it would necessarily be the back portions, and those only for residences such as workmen would inhabit. Anyone seeing Fort William, and looking at the islands in question, would be satisfied, without evidence, that the destination of the properties fronting on the Kaministiquia and also on the Mission River, is for industrial purposes, and I think the evidence in all the cases fully bears out this view. Another fact which has to be borne in mind is that on the 13th

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July, 1906, a statute was passed, 6 Edward VII, chapter 97, which was an Act to incorporate the Fort William Terminal Railway and Bridge Company. The object of this incorporation was to have a company formed for the purpose of connecting the north side of the Kaministiquia river with the islands, and also providing, not merely for the bridge, but for railway lines to serve the interests of the properties on the islands. This charter was extended on the 16th June, 1908, by virtue of chapter 109, 7 and 8, Edward VII. The charter in question was subsequently assigned to the Canadian Pacific Railway Company in March, 1908. It was strenuously argued before me that the location of the bridge was not known until May 10th, 1910, when the bridge in question was approved of by Governor in Council. This is not correct, however. According to the evidence of Dr. Hamilton, the location of the bridge was settled when the charter was sold, namely, in March, 1908. I am inclined to think that he is in error, and that the true date was December, 1908. It is quite true that the approval of the Governor in Council was only obtained on the 30th of May, 1910, but it was an approval of the location which had been previously agreed upon. The bridge in question is a very high bridge, being a roller lift bridge. The lower part of the bridge is for railway trains, the upper part for vehicles and passengers. It has a span of 125 feet in width in the centre, which forms the navigable channel at that spot. The Order in Council of the 30th May, 1910, provides that a further channel on the east shall be made so soon as it becomes necessary by the requirements of navigation. The ramp of the bridge on the Fort William side proper is thirty to one; the ramp on the island side is twenty

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to one. The location of the bridge is shown on plan exhibit number 9, in The King v. Bradburn and Webb, second expropriation. It is also shown in pencil on plan exhibit number two, fyled in the suit of The King v. Bradburn and Webb, first expropriation. I merely refer to the fact connected with this bridge as in the argument of counsel in the case, more particularly in Dr. Hamilton's cases, great stress was laid upon the effect on the values of property, of the probability of obtaining a connection between the islands and the other side of the Kaministiquia.

While it was not referred to in the evidence, it is apparent that the bridge cutting Dr. Hamilton's property in the way in which it must do when the ramp is extended, will interfere materially with the utilization of his property for manufacturing purposes. The whole of the Kaministiquia River on the north side has been built up by elevators, wharves, docks, &c., for a distance from the mouth of some miles. As the town of Fort William extends accommodation will be looked for on the south side of the river on islands one and two, and also on the Mission River on the east side.

As I have mentioned, these cases came before me at Fort William in January, 1911. It is admitted that while there was a road allowance round both islands one and two, this road allowance had never been used or been opened for traffic. During the progress of the trial, it appeared from the evidence of Mr. Merrick that while the Government contemplated the widening of the river for the purpose of improving the navigation, it was the intention to allow a slope extending out into the river for a distance of between thirty and forty feet at a grade of one and a half to one. While the getting rid of the road allowance, and giving to the land owners a frontage on the river,

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which could be utilized for dock and industrial purposes, was an undoubted advantage if Mr. Merrick's plan were adopted, it would be useless. What Mr. Merrick stated was that as soon as any of the land owners erected docks, there would be dredging done up to the docks. This was in no way binding upon the Crown, nor would it be a satisfactory way of dealing with the question. The Government are proposing an expenditure of over four million dollars for the improvement of the harbour, and for affording dock facilities to the lands fronting on the Kaministiquia and the Mission rivers. My suggestion that negotiations take place between the Government and the various land owners, has resulted in an agreement on the part of the Crown, which in my opinion, is of very great value to the owners, a portion of whose lands have been taken for the purposes of the work. This agreement has not yet, up to the date on which I am writing my reasons for judgment, 18th June, been put into formal shape, but will be before my judgment is handed out. The undertaking, as agreed to by counsel, is to the effect that each land owner is to have the right to erect docks and wharves upon the lands expropriated, so as to connect the lands which are left with the navigable channel of the river and that the Government will dredge so soon as docks are erected. Counsel for the Crown also undertook that the agreement would contain provision that if, in the future, the Government desires to further widen the river for navigation purposes, they will pay full compensation to the owners for the erections so to be made on lands which are vested in the Crown. The effect of this undertaking is in almost every case to greatly improve the remaining lands, left after the expropriation.

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Section 30 of the *Expropriation Act* reads as follows:—

"If the injury to any land or property alleged to be injuriously affected by the construction of any public work may be removed wholly, or in part, by any alteration in, or addition to, any such public work, or by the construction of any additional work, or by the abandonment of any portion of the land taken from the claimant, or by the grant to him of any land or easement, and if the crown by its pleadings or at the trial, or before judgment, undertakes to make such alteration, or addition, or to construct such additional work, or to abandon such portion of the land taken, or to grant such land or easement, the damages shall be assessed in view of such undertaking, and the Court shall declare that in addition to any damages awarded, the claimant is entitled to have such alteration or addition made, or such additional work constructed, or portion of land abandoned, or such grant made to him."

Section 50 of the *Exchequer Court Act* reads as follows:—

"The Court shall, in determining the compensation to be made to any person for land taken over, or injuriously affected by the construction of any public work, take into account and consideration, by way of set-off, any advantage or benefit, special or general, accrued or likely to accrue by the construction and operation of such public work, to such person in respect of any lands held by him, with the lands so taken or injuriously affected."

When I come to deal with the cases separately, I shall have to refer to this section, but I may state generally that in my opinion the effect of the work in question, coupled with the undertaking of the Crown, is to enhance enormously the remainder of

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the lands held by the various owners, with the lands taken. This does not apply to all the cases, but to nearly all. I will have to refer to the evidence as I go through the various cases. The Government, as a rule, have based their valuation on an acreage value of $1,000. In my opinion, having regard to the great increase to the balance of the lands, this, in most cases, is a fair amount, having regard to the changed situation since the trial by reason of the undertaking now given on the part of the Crown. The different sets of expropriations referred to were commenced, as I have pointed out, at different periods. The informations were fyled by different solicitors, and while the cases were argued together in Winnipeg on the 9th and 10th May, 1911, a great amount of labour has been caused by the manner in which they have been conducted. As I promised counsel at the time of the argument, I very carefully analyzed the evidence in the various cases, and will later on give the result of my analysis. Two questions have arisen, involving questions of law, which I will dispose of before entering into the details connected with each particular claimant. These arise out of the grants to Rochon and to Hamilton of the two water lots on the Kaministiquia river. The grants of these water lots were made by the province of Ontario in the year 1882. Subsequent to the trial at Fort William in the month of January 1911, the Crown applied for an amendment to their informations, setting up that at the time of Confederation that part of the Kaministiquia river and of the Mission river, in which the water lots were granted, was a public harbour, and that therefore no title passed to the grantees under and by virtue of the grants to them by the Crown, represented by the Province of Ontario. The amendment was allowed, and

evidence was subsequently taken by consent of parties before Mr. Justice Audette, and such evidence is now before the Court. I am of opinion that the contention of the Crown is not well founded. I do not think it could be called a public harbour. The contention might be stronger as to that part of the Kaministiquia river upon which the Hudson Bay Company had erected a wharf prior to Confederation, and which had been utilized for loading and unloading merchandise But this is a point on the Kaministiquia river a considerable distance from the place in question. It is difficult to determine what is a public harbour. As I read the authorities, it is really a question of fact. The *B. N. A. Act*, sec. 108, provides that the Public Works and property of each province enumerated in the third schedule to that Act shall be the property of Canada. The third schedule is headed "Provincial Public Works and property to be the property of Canada," dars ection 2 of the third schedule mentions "Public Harbours." In Upper Canada, certainly as far back as 1859, there were private harbours as distinguished from public harbours. (1) The report of the *Fisheries* case before the Board of the Privy Council is in print, and contains a verbatim report of the argument of considerable value, as there was a running commentary by the judges on the various points being argued. In reference to a contention that might be raised, namely that the words "Public harbours" might be harbours as distinguished from private harbours, owned by private corporations, Lord Herschell pointed out(2) that such construction could not be placed on the Statute, for the evident reason that the *B.N.A. Act*, in the section referred to, is dealing with the property of the provinces, and the words public harbours

(1) See Con. Stat. of U. C. 1859, chap. 50.

(2) (1898) A. C. at p. 711.

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must mean something other than harbours. If it were intended that every harbour such as a haven was to pass, there would be no object in the use of the word "public." As I understand the case of *Holman* v. *Green*, decided by the Supreme Court in 1881, (1) it was admitted that the Harbour of Summerside was a public harbour, and Ritchie, C. J. pointed (2) out that it was also a port for ships where customable goods may be laden and unladen. The question decided in that case was that, assuming a harbour to be a public harbour, all the foreshore bordering on that harbour formed a part of the harbour. This was the decision of the Supreme Court. In dealing with this case of *Holman* v. *Green* in the *Fisheries* case, (3) Lord Herschell, who gave judgment on behalf of their lordships is reported as follows:—

"It was contended on behalf of the provinces that only those parts of what might ordinarily fall within the term 'harbour,' on which public works had been executed, became vested in the Dominion, and that no part of the bed of the sea did so. Their lordships are unable to adopt this view. The Supreme Court, in arriving at the same conclusion, founded their opinion on the previous decision in the same court in the case of *Holman* v. *Green* where it was held that the fore shore between high and low water on the margin of the harbour became the property of the Dominion as a part of the harbour. Their lordships think it extremely inconvenient that a determination should be sought of the abstract question what falls within the description 'public harbour.' They must decline to attempt an exhaustive definition of the term applicable to all cases. To do so would, in their judg-

(1) (1881) 6 S C. R. p. 707. (2) At p. 711.
(3) (1898) A. C. 711.

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ment, be likely to prove misleading and dangerous. It must depend to some extent, at all events, upon the circumstances of each particular harbour what forms a part of that harbour. It is only possible to deal with the definite issues which have been raised. It appears to have been thought by the Supreme Court, in the case of *Holman* v. *Green*, that if more than the public works connected with the harbour passed under that word, and if it included any part of the bed of the sea, it followed that the foreshore between the high and low water-mark, being also Crown property, likewise passed to the Dominion. Their lordships are of opinion that it does not follow that because the foreshore on the margin of a harbour is Crown property, it necessarily forms part of the harbour. It may or may not do so, according to circumstances. If, for example, it had actually been used for harbour purposes, such as anchoring ships or landing goods, it would no doubt form part of the harbour, but there are others cases in which, in their lordships' opinion, it would be equally clear that it did not form part of it."

That case, as I have mentioned, is dealing with an existing harbour, and the point dealt with by their lordships was whether the foreshore of an existing harbour formed a part of that harbour. There is not much to assist in arriving at an exact definition of what is a public harbour within the meaning of the statute. I take it, however, that the language quoted would indicate that in each case it becomes a question of fact. One point is made clear, that to be a public harbour, it is not necessary that public moneys should have been expended. I think what was intended is that whether it was a public harbour or not would depend to a great extent on the question of fact as to whether the particular harbour in question had been

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actually used for harbour purposes, such as anchoring ships or landing goods, etc. There are definitions of harbours, as for instance, in *Farnham on Waters and Water Rights*, at page 27 the definition of a harbour is given as "An indentation in a coast extending into the land in such a way as to afford protection to vessels against wind and storm upon the waters." It does not seem to me that such so-called harbours can be treated as public harbours within the meaning of the Confederation Act. There is also a distinction between a harbour and a port. If a port, it necessarily follows that it was also a harbour, the exact boundaries of such harbours being a question of fact. In the *Whitstable* case, (1) the question was whether it was a port. It was not a case of a harbour. *Coulson & Forbes on Waters* (2) shows the distinction between harbour and port. I also refer to *Macdonald* v. *Lake Simcoe Ice Company* (3). I am of opinion that the evidence in this particular case falls short of proving that at the time of Confederation those parts of the Kaministiquia and Mission rivers where the water lots in question had been granted were a public harbour.

A further question of considerable importance arises on the question of the value of the water lots. There is no evidence of any market value for these water lots. All the evidence given is simply speculative. There had been no sales of water lots; in fact, I think the three water lots in question are the only water lots granted. At the time of the expropriation in question there had been no erections on any of the water lots. In the case of the Rochon water lot at one time there had been an erection, but it subsequently got into disuse and was allowed to disappear.

(1) (1869) 4 E. & I. App., 266. (2) 3rd ed., p. 464.
(3) (1899) 26 O. A. R. 415.

Then, moreover, in arriving at the values of these water lots, it has to be kept in mind that all round the islands there was a reservation for a highway; so that no question arises of any claim to any part of the bed of either of the rivers as a right by title, except such title as they may have acquired by the patents of these water lots. Two of the water lots, namely the Rochon lot and one of Dr. Hamilton's, are water lots granted on the Kaministiquia river. These water lots, as I have stated, were granted in the year 1882 by the Province of Ontario. No application for permission to make any erections had been made. I think it is beyond question that the Kaministiquia river was at the time of Confederation a navigable river. This has hardly been questioned. It is a deep river, although shallow at the mouth, which required larger vessels to unload into scows, in order to pass over shoal water at the mouth. So far back as 1886 the Dominion Government expended considerable sums of money in deepening the entrance of this river, so as to enable large vessels to enter to Fort William, and there can be no question that from that date onwards it was a navigable river.

In dealing with the question what is or is not a navigable river, it must be borne in mind that in the early years, from 1867 backwards, the craft that plied on these rivers was of different character from what they are at the present moment. At all events prior to the expropriations on the Kaministiquia, the Kaministiquia had certainly become a navigable water within the provisions of cap. 115 of the R. S. of 1906, to which I will refer later. The original statute was chapter 35 of 49 Victoria, 1886. In my view of the law the navigable waters extended from bank to bank and

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included the waters over the lands granted by the water lot patents.

The case of *Williams* v. *Wilcox*, (1) was decided in 1838. As far as I can find, the law there enunciated has been recognized as the correct exposition of the law. In that case the replication, at page 316, stated "that while the river Severn was and is a public "navigable river, yet the plaintiff alleged that the "said part of the river in and across which the said "weir, etc., had been erected was not part of the said "river other than and wholly distinct from the channel "of the same, in which the lieges, etc., had had navi- "gated and passed." Then they allege "that the "said part of the said river in and across which the "said weir, etc. had been so erected, etc., is not, and "the said several times when etc. was not a public com- "mon navigable river for all the lieges, etc. to navigate, "etc. on the said part of the said river". Rejoinder, "that the said part of the said river in and across "which the said weir, etc., had been so erected and "placed is, and at the said several times when, etc., "was part of said river Severn, etc". In delivering "the judgment of the court Lord Denman, at page 329, puts it in this way:—

"If the subject had, by common law, a right of "passage in the channel of the river paramount to "the power of the Crown, we cannot conceive such "right to have been originally other than a right "locally unlimited to pass in all and every part of "the channel."

Then he proceeds to state that "All these consider- "ations (referring to what precedes) make it an "almost irresistable conclusion that the paramount "right, if it existed at all, must have beeen a right

(1) (1838) 8 Ad. & El. 314.

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"in every part of the space between the banks. It "cannot be disputed that the channel of a public "navigable river is a King's highway, and is properly "so described, and if the analogy between it and a "highway by land were complete, there could be no "doubt that the right would be such as we now lay "down, for the right of passage in the highway by "land extends over every part of it." (1)

I am referred to the decision of Chancellor Sir John Boyd, in the case of *Ratté* v. *Booth* (2). In considering that case, it must be borne in mind that the contest was between the person in actual occupation of a floating boat house, and a wrongdoer who was interfering with his enjoyment. The circumstances in that case and in the one before me are very different, but in that case, at p. 499, the Chancellor points out that even if the owner erect on the bed of the river some structure which is not at the time detrimental to the public right of way, but the by changing conditions of the stream, or other cause, it should subsequently turn out to be a nuisance, no lapse of time could legalize what he had done. I do not see that anything determined by the learned Chancellor differs from the law as laid down in *Williams* v. *Wilcox*, and the learned Chancellor himself refers to *Williams* v. *Wilcox* as a binding authority. Numbers of cases were referred to by counsel in their elaborate and able arguments. Most of them were cases between individuals. The *Warin* case referred to, (3) affirms the proposition that so long as the water lots in question were not built upon they remained open

(1) See also *Attorney-General* v. *Earl Lonsdale*, (1868) L. R. 7 Eq., 389, and *Attorney-General* v. *Terrell*, (1874) L. R., 9 Ch., 423, and the judgment of Sir George Jessel, M. R. at p. 425 in which he refers to the case of *Rex* v. *Russell*, 6 B. & C., 566, as, in his opinion, not being good law.

(2) (1886) 11 O. R. 491.

(3) (1885) 7 Ont. R. 707; (1885) 12 O.A.R. 327; 14 S.C.R. 232.

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for navigation. It is pointed out by Ritchie C. J., at 236, that the right of the owner of a water lot in that case to fill up the water lot was by virtue of "the combined effect of the Crown grant and the "subsequent legislation". In considering the effect of that case it is necessary to remember that the Crown was dealing with what was then part of the public harbour at Toronto. By an order in council passed in 1837 the boundaries of the City of Toronto were extended south to what was known as the old Windmill line. By subsequent legislation the boundary has been extended further south (but that is not a matter that affects the decision in the *Warin* case). A patent was issued to the City, conveying to them certain water lots, including the water lot in question in the *Warin* case, with a reservation for public streets. The grant of the water lots was confirmed by statute.

I do not think the *Warin* case is similar to the case before me.

Having come to the conclusion that the Kaministiquia is a navigable river, and that the navigable waters of the river extend from bank to bank, I must proceed to ascertain the value of these various water lots, which I will do later on in referring to the particular cases. Strenuous arguments were adduced before me to the effect that the grantees of these water lots have the right, or had the right at the time of the expropriation, to erect wharves and buildings on them. I do not agree in this contention. To place any such obstruction would, in my opinion, create a nuisance. It is argued, however, that permission might have been obtained under the provisions of sec. 7, cap. 115, of the *Revised Statutes of Canada* and that such leave would probably have been granted, and that therefore, in valuing the water lots, the chance of obtaining

such license should be taken into account. The statute in force at the time of this grant was chapter 23 of the *Revised Statutes of Ontario*, 1887, section 47, which is a revision of the Act in force at the time of the grant of the water lots. It enacts:—

"It has been heretofore, and shall be hereafter, "lawful for the Lieutenant-Governor in Council to "authorize sales or appropriations of land covered "with water in the harbours, rivers, and other navi- "gable waters in Ontario, under such conditions as "it has been, or it may be deemed requisite to "impose, but not so as to interfere with the use of "any harbour, river or other navigable water."

As I have mentioned, at the time of the expropriation by the Crown, no erections had been placed on these water lots, and no license had been applied for or granted to erect any such works. What is to be ascertained is the market value of these water lots. If the hope of obtaining leave to place erections added to the market value this would be an element that would necessarily be taken into account. In the case before me, however, there is no evidence whatever of any market value. The values given are merely speculative, with the exception that in regard to the Hamilton water lots we have evidence that a certain sum was placed as their value at the time of the sale to Dr. Hamilton. I will refer to this when dealing specifically with the Hamilton case. It may be a question whether a hope of this kind is an element that should be taken into account. The decisions in this court and the Supreme Court follow the line of decisions under the English Land Clauses Act, except where varied by local statute. Such cases as *Reg.* v. *Liverpool and Manchester Railway Company*, (1) *Bird*

(1) (1836) 4 Ad. & El. 650.

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v. *Great Eastern Railway Company*, (1) *Rex.* v. *Commissioners of Nene Outfall*, (2) may be referred to as showing what is the meaning of land or interest in land or property under the English statute. This is a question not of much material importance in dealing with this case, as the Crown has by its amended informations offered what I consider an ample sum for any interest the owner of the water lots may have. I am referred to the case of *Cunard* v. *The King*, (3) as determining the question that such a hope should be taken into consideration. In the Supreme Court the judges seem to have assumed that I was of opinion the patent was void, under the decision in *Wood* v. *Esson.*(4) There is a justification for this conclusion from a paragraph in my reasons for judgment, but it was not my intention to so hold, nor did I consider the *Cunard* case with that idea in my mind. All I intended to decide was that it was void so far as enabling the grantee to construct wharves. In my reasons for judgment in that case, at page 416, I put it in this way:—

"As far as I am concerned, I am bound by the decision of the Supreme Court in *Wood* v. *Esson.*(4) The effect of that decision is that the Crown, for the Province, cannot grant a water lot extending into navigable waters, so as to enable the grantee to construct or erect any wharf or other obstruction that will interfere with navigation without legislative authority."

Subsequently I state: "It becomes necessary, therefore, to consider the case as if the present defendants had not acquired the right to erect any structure."

(1) (1865) 34 L.J.C.P. 366.
(2) (1829) 9 B. & C. 875.
(3) (1909) 12 Ex. R. 414; 43 S. C. R. p. 88.
(4) (1883) 9 S. C. R., 239.

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Under the *Expropriation Act*, section 26, the information exhibited on the part of the Crown must set out the sum of money the Crown is ready to pay. Where no amendment is made to the information, and counsel for the Crown renews the tender at the trial, I think I am bound to allow the amount offered. This was the case in *Cunard* v. *The King*.(1) The amount was certainly large enough to cover any claim such as the contingent one mentioned in that case. This view of it was taken by the judges of the Supreme Court. I do not read the reasons of the learned judges as intending to hold that such possibility of assent was to be valued, if, in point of fact, such a possibility did not really add to its market value. As I understand that judgment, it is in effect, merely saying to counsel that even if the contention were well founded, the owner was amply compensated. The case relied upon in the Supreme Court by counsel for the appellant and referred to in some of the reasons for judgment, *Lucas* v. *Chesterfield Gas and Water Board*, (2) is a case of a different character. In that case the owner of the property in question was absolutely entitled to the property that was being valued. There was no contingency dependent upon which his complete title had to be perfected. The whole question in that case was as to the value of the property which the land owner had, and in dealing with the value they were merely stating that, in determining the value arising from such adaptability, the tribunal would have regard to the contingent value arising from the possibility of the land coming into the market when required for the particular purpose. Vaughan Williams, J., at page 25 states:—

(1) (1909) 12 E. C. R. 414.

(2) (1909) 1 K. B. D. 16.

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"I agree with Bray, J. that the fact that no buyer for reservoir purposes could be found, except a buyer who has obtained parliamentary power, does not prevent the special value being marketable, both on the ground that is stated by Stephen, J. *in re Countess of Ossalinsky and Manchester Corporation,* in the passage quoted by Bray J., and also on the ground that the fact that the Board themselves might become possible purchasers, who would give a special price for the land, ought to be considered."

Again at page 27 the judge states:—

"Supposing the general value is only given, if this land was probably certain, within a reasonable time, to be used for certain purposes, which would give it a very much enhanced value, that is a matter for the arbitrator to take into consideration. I am clearly of opinion that it is, and that the arbitrator has rightly taken that matter into consideration." And so went the judgment in that particular case.

In the case before me of these two water lots, it is quite apparent that at and prior to the time the value was to be ascertained, no assent would have been given by the Dominion for the erection of any structures on these water lots. Prior to the expropriation, the Government had determined upon the widening of the river, and had prepared plans for that purpose. Fort William is a city of rapid and considerable growth and a large amount of shipping business is done there. It required better navigation facilities, and it is not reasonable to suppose that the consent would be granted, and so defeat the very scheme which they had on hand. I have come to the conclusion that while the patents conveyed these water lots to the grantees, it was a prerequisite before they could utilize them for the purpose of erecting obstructions that consent

should be acquired from the Dominion Government under the provisions of the Statute to which I have referred.

In regard to the Mission river, I have had considerable doubt as to whether the waters of the Mission river should be treated as navigable waters prior, at all events, to the expropriation. It is not a question of very much moment, having regard to the evidence of value and the offset which the Crown is entitled to by reason of the works being constructed. I think the Mission river could hardly be called a navigable river. Mr. Merrick in his evidence seems quite clear on this point. It was a winding, tortuous river, with a depth of about 8 feet in the channel, with only four feet at the mouth where it enters. There is no evidence whatever of its ever having been used.

Having set out the main questions of law and facts, I now proceed to take up in detail the various cases in the order in which they were tried before me, except that I shall deal with the two expropriations in regard to the same lands together. I may say that at the trial in some cases the evidence was given as to the first expropriation, and a lapse of several days would intervene between that evidence and the evidence affecting the same lands by the second expropriation. In nearly all the cases I may say that the values sought to be obtained by the land owners is grossly excessive. It is left to the region of conjecture and speculation. It has, however, to be said in favor of the various land owners that at the time the evidence was given the Crown had not given the undertaking which has since been given, and which makes a very material difference in the case.

So as to avoid repetition I may state that in all cases before me, the claimants are entitled to interest on

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the amounts awarded from the date of the expropriation to the date of judgment. I also think that they are entitled to their costs of the action, and in each case the undertaking given should be referred to in the judgment as required by the statute.

THE KING *v.* BRADBURN & WEBB.

The first expropriation was on the 14th September, 1907. What was taken was six one hundredths of an acre. The Crown offered $45 being at the rate of $1,000 per acre. The defendants claimed the sum of $180, or being at the rate of $3,000 an acre. John Taylor Webb, one of the witness, deposed that he purchased 33 acres, of which the six hundredths of an acre formed a part a part in 1906. He paid for the block $23,000, which would be equal to $750 an acre. He states in his evidence that he was holding the property for industrial purposes. He is asked:—"Q. Have you had any offers for it for that purpose ?

A. No, there has been some talk of offers, but it is simply people asking for options, and myself and my associates did not consider them as being bona fide, and we did not consider them.

Q. But in a manufacturing concern they wanted shipping facilities? A. Probably would.

Q. And immediate access to the navigable waters would be of great value? A. Apparently the question of access is an open one. I was not in a position to guarantee any water right to anyone.

Q. If that immediate access to the water were afforded to you, it would add greatly to the value? A. Naturally."

Referring to the shortening of his frontage by 145 feet, he is asked:—"Q. What effect in dollars and cents would the loss of that access of 145 feet have on the whole lot?

A. It would be very small."

Some of the witnesses, to whom I will refer later, notably Mr. Young, Mr. McKellar and Mr. Ruttan, intimate that a thousand dollars an acre would be ample, having regard to the increased value to the balance of the lands, owing to the works of the Government. Some of the witnesses placed the value of the lands at $3,000 an acre, the additional $2,000 being given by virtue of the enhancement owing to the Government works. They, therefore, treat the land, for the purpose of the expropriation, at $1,000 an acre, setting off the $2,000 against the value. Strictly speaking, the additional value given by these works would be the additional value to the whole lot, which would practically debar the owner of the land from getting any compensation at all. Bradburn, the co-defendant with Webb, is asked the following questions:—

"Q. The effect of your proximity to a navigable stream would add extra value to it? A. Yes, I guess so.

Q. And it was, as a manufacturing site, you thought it had this great value? A. Yes.

Q. You had to have the right to have the shipping facilities before the land would have the value which you had placed upon it? A. Yes."

He, in common with other witnesses, is placing values upon the land as such value was increased by the works in question. Mr. Young, the Mayor of Fort William, said: "I consider that the islands, perhaps, are more valuable for commercial purposes than for any others". He states further on in his examination, in reference to an interview he had with Mr. Temple about the values of properties which were being expropriated as follows:—

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Q. "Did you advise him (Temple) generally about the value of property in that locality? A. I think our conversation was more in the lines of the benefit or otherwise of the dredging or widening of the river, the straightening of the river.

Q. Did you put any specific value on property generally in that neighborhood? A. I think I said that the land was being improved by the fact of being dredged on a straight line, that a reasonable valuation for government purposes would be about one thousand dollars.

Q. You think you told him that if the frontage on the water were reduced to a straight line by dredging operations, it would increase its value?

A. The idea was the natural contour of the river was in such a shape that boats could not lie, or a dock could not be built on a straight line, that if the river were straightened to make it possible to have a straight dock, notwithstanding the value of the land where improvements were made of that nature, $1,000 an acre would be a fair price for the Government to pay.

THE COURT: That is if the river bank were straightened and the river dredged? A. Yes."

He states again:—

"Q. If offset gained, would leave it about $1,000 per acre? A. Yes.

THE COURT: Taking into account the straightening of the river and the dredging? A. Yes."

He was asked again:—

"Q. That you said is the fair price to pay for an acre? A. To pay for land in that neighbourhood; I won't deny it. I will state positively what I did say and what I meant. I said I thought, as I told you before, that the fair price for the Government to pay for land, notwithstanding its value, would be about $1,000

an acre, at that rate. I made that as plain as I could.

THE COURT: That means that, although the land might be of greater value, still taking as an offset the manifest advantages to the land owners by reason of the straightening of the harbour, that they should get about $1,000 an acre? A. I might say that at that time some land of my own further up the river was in question for expropriation, and, in a general way, all over the property, I thought if the Government paid that amount for it, including my own, that that would be a fair amount to pay, where they were making improvements to the land.

THE COURT: Q. You offset the benefit to the land that has been improved?

A. Yes."

I may say that I agree with Mr. Young, but think that if the Government insisted on it, as I have stated before, the offset to be taken into account would be the increased valuation to the whole block, and not merely the particular piece that was expropriated. The Government, however, have offered to pay the compensation at the rate of $1,000 an acre, and I think the sum offered is ample, having regard to their undertaking to which I have referred.

KING *v.* BRADBURN AND WEBB (NO. 2.)

The date of the expropriation is 12th May, 1909. Mr. Merrick gives evidence in regard to the plans to which I have already referred. The area of lands expropriated was 2.70 acres, and the Crown offers $2,700. In their defence to the second expropriation the defendants state in paragraph 3:—

"The said block of land, at the time of the depositing of such plan, possessed a valuable water or harbour

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frontage on the Kaministiqia River, and the said lands were suitable and in demand for docks, grain-storing and handling, terminal elevators, warehouses, large industries and other lake and rail terminal facilities, as well as being valuable for subdivision, and of great and increasing value."

It is needless to repeat what I have already referred to at perhaps too great length, that all this value was dependent upon their getting access to the river. Lumby, who was called as a witness, placed a value on the land on the 12th May, 1909, of $5,000 an acre. Mr. Lumby was in the real estate business. He states, in answer to questions, as follows:—

"Q. So that you think there is an additional value when you get to the Kaministiquia River? A. Yes.

Q. That is speculative, even now, fanciful: there is no use put to either place? A. All of our prices are speculative there.

Q. Even the prices you are giving here to-day are speculative? A. Yes, the prices at which you would get speculators to buy.

Q. The prices which you are suggesting are what you have put on the property and trying to get? A. Yes.

Q. You do not know if you could get them?

A. No, I am not a prophet".

Mr. Webb, in referring to the existence of the road allowance, puts it as follows:—

"THE COURT. Supposing that land is taken and the river is widened all along in front of your place: Assume that, is it not an advantage to you to get rid of the road allowance between you and the water? A. Providing I have rights to the water;

Q. But with your frontage right on the water, instead of this road allowance between you and the

water, for industrial purposes, is it not a better proposition? A. Yes, if I could get access to the water.

Q. I am talking for industrial purposes. For industrial purposes they bring your frontage to the water and you get some means of utilizing the frontage for dockage; you are better without the road allowance? A. Yes.

Q. Is that not a matter of common sense? A. Yes."

He is asked:—

"Q. You say as a fact that it is the industrial side of the future use of this property that appeals to you? A. Largely; that is why we keep it as it is."

He says:

"We must utilize it for something, if the Government will not enable us to utilize the water; we must utilize it for something.

Q. The proposition in your mind for the purpose of the property was from an industrial standpoint? A. Quite right.

Q. And its value lies in its possibility from an industrial standpoint? A. That is the way I size it up.

Q. And that is the value of the island proposition as a whole? A. The island proposition as a whole would be, I think, for industrial purposes."

He says in answer to a question:—

"I think there is a good deal of gambling about the entire west, and not only for the island, but in the City of Fort William as a general rule. I think you have had a finger in the pie, (referring to counsel cross-examining) and so have I. I have not lost much, but I do not know how it will be later on."

He is asked by me:—

"Q. You never thought of that island being dedicated for asylum purposes? A. No. I am afraid that would detract from the value of the property.

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Mr. Dowler. You are not suggesting that all engaged in this might want to go there? I do not know about the legal part, but I know some of the witnesses might:"

No doubt he is here referring to the inflated notions of some of the real estate men.

I think the amount offered by the Crown is a reasonable amount, having regard to the present circumstance stances, and I so award.

The next cases are

THE KING *v.* LA CORPORATION DU COLLEGE STE. MARIE À MONTREAL AND THE KING *v.* THOMAS P. KELLY.

These are lands owned by Thomas P. Kelly. The expropriation was the 6th August, 1906. The land taken was 2.83 acres. The Crown offered $2,122.50. The defendants claimed the modest sum of $25,000. It appears that Thomas P. Kelly purchased ten acres, of which the land expropriated formed a part, on the 15th October, 1896, for the sum of $14,240. He states that the value on the 15th October was about the same as the value on the 6th August, the date of the expropriation. His frontage before the expropriation was from 1,300 to 1,400 feet. He offers at the trial to take one-half of the $14,250. The price the College sold for was $13,500, the difference between that sum and the $14,250 is made up by a commission. This particular piece of land fronts on the Kaministiquia and the Mission, and is being taken for the purpose of a turning basin. There will be no difficulty in straightening the land, so as to give a larger frontage on the Kaministiquia. The second expropriation took place on the 12th May, 1909. By this second expropriation two parcels were taken, one containing 2.60 acres more or less and the other nineteen hundredths of an acre.

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The Crown offers for the 2.60 acres $2,600, and for the nineteen hundredths $95. The defendant claims a sum of $150,000. In the statement of defence in the second expropriation the third paragraph reads as follows:—

"The said block of land at the time of the depositing of such plan possessed valuable water or harbour frontage on the Kaministiquia River, and the said lands were suitable and in demand for docks, grain storing and handling, terminal elevators, warehouses large industries, and other lake and rail terminal facilities, as well as being valuable for subdivision, and of great and increasing value."

As I have pointed out, he goes on to claim the sum of $150,000. In the first expropriation he had based his claim to damages to a great extent by reason of its being ruined for dock purposes by reason of there being a turning basin in front of his land, and he calls Captain McAllister and others to support this view. On the 6th of August, 1906, this property that was left to him would be worth, according to his story, half of $14,250, a very large claim against the Crown being by reason of the loss practically of dockage frontage. Between that date and the 12th of May, 1909, this same property that was left, valued on the 6th May, 1906, at $7,125, has suddenly reached the value of $150,000, and that for the reasons stated in the first paragraph of the defence which I have quoted. The witnesses in this case also refer to the property as being destined for industrial purposes. William C. Lille, a real estate agent in Fort William, gave evidence of values, in which he attempts to put a very large sum as the value of the lands. He is asked:—

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"Q.—The whole of your valuation is based on the proposition that you are entitled to dock frontage? A.—Yes, for industrial purposes we are figuring. THE COURT.—You are figuring on getting the right to a dock frontage on the river? A. Yes, to a certain extent."

Peter McKellar, who was the owner of the property on the Kaministiquia River, was called as a witness. He sold on the 3rd September, 1909, the land off his frontage at the rate of $1,000 an acre, and he considered that a fair price on account of the conditions. He is asked:—

"What conditions? A. I refer to the great improvements that were being made for the benefit of the city.

Q. And the widening of the stream? A. I consider what we had left would be enhanced a great deal more in value than what we lost.

Q. You consider that the property you had left after the work was done was worth more than the property was worth in its original condition? A. Yes."

Mr. Ruttan, who had been engaged in the real estate business for a great many years, refers to prices paid for land. He is asked:—

"Q. What advantage, if any, would the land derive from the works.

THE COURT. Assuming the dredging took place.

A. Assuming the land taken to embrace the road allowance in front of the lot, and assuming that that taken by the Crown would result in their bringing the navigable water up to the water's edge of the property I was concerned in, I thought I would rather have my client accept any moderate compensation than to lose the advantage that in my opinion would

result to him from getting rid of the road allowance.

THE COURT. What is your idea of a moderate compensation.? A. I can tell you what I advised him.

Q. What is your opinion? A. I should think $500 an acre was an adequate compensation in his case.

THE COURT. Having regard to the improvement in the rest of his land by the dredging out and getting rid of the road allowance? A. Yes."

As I have before stated, I have no doubt whatever that the work done, coupled with the undertaking given by the Crown, will far more than counterbalance any loss which these claimants have suffered. I think that in both these cases, the sums offered by the Crown are sufficient.

I have pointed out in the other case that in allowing the offset, the witnesses practically do not allow, by way of offset, the increased value to the balance of the land not expropriated. They simply assume that the particular land expropriated is worth $3,000 an acre, but by reason of the benefit that it should be valued at the rate of one thousand dollars. The Crown has, however, treated it as the value of $1,000 an acre.

In each of these cases the judgment should go for the amounts offered by the Crown.

THE KING *v.* HAMILTON.

There were two expropriations and two sets of pleadings in relation to the property owned by Dr. Hamilton. The properties front on the Kaministiquia river and also on the Mission river. The first expropriation was 10th September, 1908. This related to the two water lots, the one on the Kaministiquia and one on

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the Mission river. The acreage of the water lot on the Kaministiquia was .674 acres, and the acreage on the Mission river 1.755 acres. These water lots were granted, as I have pointed out, in the year 1882 by the Ontario Crown. The Crown offers for the two lots the sum of $1,367. The defendant by his defence claimed the sum of $25,000. As I before stated, an amendment was applied for on the part of the Crown, setting up that these water lots were granted in what was, at the time of Confederation, a harbour. This contention I have dealt with, and my opinion is adverse to the Crown. In answer to the amended statement of defence, the defendant amended the claim of $25,000 and asked the sum of $250,000 damages. This demand is simply preposterous, according to the view I take of the evidence. A land owner whose land is compulsorily taken is entitled to full compensation, but he is not entitled to more than what is just and I can see nothing gained by making such preposterous demands. Dr. Hamilton in his evidence at the trial relies upon the properties in question as being mainly valuable for first class residential sites. This I do not agree with. I have stated my reasons in a previous part of this judgment, and I think it was hardly argued by the counsel that such was the destination of the property in question.

Dealing first with the water lot on the Kaministiquia River, I have given very fully my views in regard to these water lots, and I do not propose to repeat what I have previously stated. In the amended information the Crown sets up that if it be found that the said lands be not vested in His Majesty as part of a public harbour, His Majesty is willing to pay the defendant, or whoever shall prove to be

entitled thereto, the sum of $1,376, in full satisfaction of the said lands and real property. This covers both the water lots on the Kaministiquia and on the Mission river. The expropriation was on the 10th September, 1908. As I have already pointed out, the plan for the widening of the Mission river was not approved of until after this date, but Mr. Merrick, the engineer, assuming that it would be approved, subsequently expropriated with a view to the Mission River work, The water lot on the Kaministiquia river was purchsed by Dr. Hamilton in April, 1903. He got an option on 70 acres at $350. per acre. It subsequently appeared that there was an additional five acres and the water lot for which the vendor asked $7,500. It ended in Dr. Hamilton purchasing the 75 acres and the water lot for the sum of $27,000 cash. This would be at the price of $360 an acre. The second expropriation took place on the 12th May, 1909. It embraced two parcels on the Kaministiquia river, one containing 4.31 acres, and the other .95 acres. There were six parcels on the Mission river; one parcel (3) containing .98 acres, parcel (4) 1.12 acres, parcel (5) .60 acres, parcel (6) .26 acres, parcel (7) 2.56 acres, parcel (8) 2.94 acres. The Crown offered for parcel (1), namely the 4.31 acres, the sum of $4,310, for parcel (2), the .95 acres, $950, for the Mission river properties, parcel (3) ·98 acres $490, parcel (4) 1·12 acres, $560, parcel (5), the ·60, $300, parcel (6), the ·26 acres $130, parcel (7) 2·56 acres, $1,280, and parcel (8), 2·94 acres, $1,474. The total amount offered by the Crown for the eight parcels is $9,490. I have before pointed out that at the time of these expropriations there was a road allowance intervening between the water and the lands in question

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In answer to the second expropriation, the defendant states, in his third paragraph, as follows:—

"The said blocks of land, at the time of the depositing of such plan (referring to the plan filed on the 13th May, 1909), possessed valuable water or harbour frontages on both the Kaministiquia and Mission rivers, and the said lands were suitable and in demand for docks, grain storing and handling, terminal elevators, warehouses, factories, and other lake and rail terminal facilities, as well as being valuable for subdivision, and of great and increasing value."

With this allegation, with the exception of their great increasing value, with which I am not at present dealing, I concur; but it is well to bear in mind the reason why these properties became of such value for dock and other purposes set out in the defence. It seems to be ignored by the claimants that what gave value to the properties were the works undertaken by the Government, and they ignore altogether the offset which the statute requires to be taken into account when dealing with their claims. As I have stated, at the time of the expropriation the Mission river was not a navigable river. The plan adopted by the Crown was to widen this river, so as to have a navigable river of 500 feet in width, with a depth of about 25 feet; also with the Kaministiquia river. The road allowance in front of these properties has been got rid of. The properties are placed with a river frontage, and the effect of the undertaking given by the Crown is, in my judgment, to add enormously to the value of the lands in question both on the Kaministiquia and the Mission rivers, and the increased value to the balance of the land would far more than offset any damage which has been occasioned by the expropriation. I have previously referred

to the bridge, which, according to the evidence of Dr. Hamilton, was located in March, 1908; no doubt, as argued, the erection of the bridge when completed must have a beneficial effect on the lands. It is a roller lift bridge. It is partly completed at the present time, June 20th, 1913, but it is not yet finally completed. I am not at all sure that the erection of this bridge will not have an injurious effect on the property of Dr. Hamilton, from an industrial standpoint. I have referred to the plans in the previous part of my judgment. In negotiating for the purchase of the five acres and the water lots, according to Mr. John McLaurin's evidence, the two water lots on the Kaministiquia river and on the Mission river were sold by him to Dr. Hamilton for the sum of $500, and the five acres for the sum of $4,500. In the conveyance the prices were not separated. According to Dr. Hamilton, it was a lump sum of $5,000 for the five acres and the two water lots. I think Mr. McLaurin's memory of the transaction is the better. The evidence of Dr. Hamilton would indicate that he had suffered a loss by reason of the road allowance being taken away and the water lot expropriated, of about $148,500. This, as I have stated, is in my opinion an absurd claim. He is asked in his evidence:—

"Q. Did you consider that you, as owner of the water lots, would have the right to make such use as you pleased of them? A. I did not suppose I could: I did not suppose I could use them for any purpose I wanted to.

Q. What would you use them for? A. For dock purposes.

Q. You thought you could build upon them? A. Yes.

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Q. You thought you could? A. Yes, docks such as are suitable for the locality.

Q. Without being molested in any way? A. Yes.

Q. You thought you had a perfect right to make such use of them as you saw fit? A. Yes.

Q. You did think you could build docks or wharves upon them? A. Yes.

Q. You do not know of any other sales of water lots near you in 1908? A. I do not think anybody round there has any."

Lumby, who is called as to values, places a value, but as he states, the values are purely speculative. He says in answer to a question:—

"Q. And if you could go 19 feet out, would that be of any value to you? A. It depends on what you could do with the 19 feet. You were saying you should not interfere with navigation in that 19 feet: it would be of no value, if you could not build a dock out in the 19 feet."

And this would be obvious to anyone, it seems to me. George Adair, also in the real estate, places a large value, but again purely speculative. He also points out the advantage gained by having the property fronting on the water. Having regard to all the circumstances which I have very fully dealt with, and the undertakings given by the Crown, I am of opinion that no injustice is done to Dr. Hamilton by coming to the conclusion that the offers made by the Crown, coupled with the undertaking, will fully compensate him, and I direct judgment to be entered in these two cases for these two amounts.

THE KING *v.* WALSH AND ROCHON.

On the 14th September, 1907, the Crown expropriated three parcels of land. The first two parcels were

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lands on island number one. The third parcel is on island number two. Parcels numbers one and two are the property of Rochon, subject to a mortgage. Parcel number three belongs to the estate, and Rochon has no interest in this third parcel. I will deal with parcels one and two separately from parcel three.

Parcel one is the water lot referred to previously as the Rochon water lot. It had a frontage on the Kaministiquia of 1066 feet, with a depth on the easterly side of 95 feet, and on the westerly side of 70 feet. The whole area is 1.46 acres. Parcel two has an area of 1.43 acres. The Crown offered for the three parcels the sum of $5,065. On the 12th May, 1909, a further portion of the land that was left with Rochon comprising 1.74 acres, was taken by the Crown and for this the Crown offered the sum of $1,740. The defendant Rochon claimed the sum of $25,000. In his defence to the second expropriation, referring to the damage occasioned to him by the second expropriation, he states as follows:—

"The defendant Rochon further says that the land mentioned in the said information is a portion of the lands so purchased by him as aforesaid, and of which he is the equitable owner, as aforesaid, and the defendant Rochon says that the said lands mentioned in the said agreement were and are valuable water front properties, and of great and increasing value, and at the time of the depositing of the plans set forth in the information, the said lands possessed a valuable water and harbour frontage on the Kaministiquia River and the said lands were suitable and in demand for docks, warehouses, terminal elevators, large industrial and other lake, rail and terminal facilities, as well as for other purposes, and were of great and increasing value, but by virtue of the expropriation by the Crown,

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the defendant, in addition to being deprived of a large part of the water or harbour frontage of the said lands, has suffered great loss or damage by reason of the fact that the said lands so owned by the defendant Rochon, and not expropriated, have been injuriously affected and made particularly of little use or value."

All that I have said in reference to the Hamilton cases is applicable to the Rochon cases, so far as the result of the first expropriation. The Crown counsel properly admitted on the argument of the case that Rochon was entitled to more consideration than the other claimants. This arises from the fact of the peculiar shape of Rochon's property. Originally the property comprised an area of four acres. According to Mr. Rochon's evidence, these four acres were purchased by him on the 25th May 1907, irrespective of the water lot, for the sum of $20,000. He apparently was of the opinion that he would be able to utilize the water lot for dock purposes. He says in his evidence in answer to the question:—

"Q. Had the frontage on the water anything to do, in your mind, when you bought the property? A. Altogether.

Q. You were buying as you thought, water frontage? A. I was buying water frontage.

Q. In your mind at that time, what possible use was there for this property? A. It could be used for a good many years for elevator purposes, dockage and warehouses.

Q. And were these in your mind at the time you bought? A. Yes.

Q. Would you have bought the property without the water lot? A. Not at all.

"Q. You would treat this property as having a frontage on the river of 1,066 feet? A. Yes.

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Q. If your property had not gone in this triangular shape in the rear, but had gone square back, what do you say as to the valuation?

A. I do not think it makes much difference. I bought that property with the expectation of using the water front more than the back, but I took it for granted I could build on the water lot and get the allowance between."

After the first expropriation of the two lots Rochon was left with 778 feet of frontage in lieu of 1,066 feet that he previously had. He was very pleased with the water frontage, which, with the undertaking of the Government, would make a valuable property. Had the case rested with the first expropriation, having regard to what I have held in regard to the right to utilize the water lot, I would have been of the opinion that the damage would not be very much. In other words, the privileges granted to him would offset, to a great extent, the damage. The acreage, as I have pointed out, in the first expropriation was 1.43 acres. In the second expropriation the Crown expropriated 1.74 acres. This would leave Rochon, after the second expropriation, with eighty-three one hundredths of an acre. The four acres were peculiarly shaped. They practically were triangular in shape, with the base fronting on the river. Expropriating the 3.17 acres of the base of the triangle left him with a piece of property still triangular in shape, with very small depth, and it is on this account that the Crown counsel very properly thought that Rochon was entitled to consideration greater than the others. Counsel in his argument left it to me to say what I thought would be a fair compensation. After giving the matter a good deal of consideration, I think if Rochon were allowed for the 3.17 acres at the rate of $5,000 per

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acre, that being the price paid on the 14th September 1907, he would be fairly compenstead. This would make $15,850. For the water lot I would allow him an additional $1,000. I think in addition to that he would be entitled to 10 per cent. for compulsory expropriation, which would leave the whole claim $18,535. I have no doubt he will be able to make some use of the eighty-three one hundredths of an acre which is left to him, taking into account the undertaking given by the Crown. The interest of Rochon is subject to a mortgage, and in the judgment care must be taken to protect such interest.

In regard to parcel number three, owned by the estate of Walsh, it stands on a separate basis. The property is situated on island two. According to the statement in the information, the lands taken comprise two and six tenths acres. It is property situate on the Kaministiquia and McKellar rivers. There is no specific sum mentioned in the information as compensation for this particular parcel of land. The Crown in its information makes one offer for the three parcels, namely the two I have dealt with as belonging to Rochon, and this particular piece of two and six tenths acres. The total for the three parcels was $5,065. At the trial, on the opening of the case, when Mr. Merrick was called to give evidence, it was admitted that parcel three comprised 1.29 acres. Prior to the expropriation of the 14th September, 1907, the road allowance surrounding the property had a frontage on the Kaministiquia side of about 450 feet, and on the McKellar river side practically 700 feet. After the expropriation there were two pieces left on the Kaministiquia, one of 740 feet in length and the other 125 feet in length, and on the McKellar river there would be left 450 feet in length in lieu of the 700 feet

which they had on the river prior to the expropriation. It is conceded by everybody that the Kaministiquia frontage would be of much greater value than the McKellar river frontage.

Walsh, in giving his evidence, states as follows:—

"Q. You were injured in a special way by reason of the line of the exproriation not following a straight line across from the McKellar river. I am speaking of parcel number three. You claim you have a special grievance by reason of that line not being carried through as a straight line? A. Yes, I contended that at the time.

Q. And you contend so still? A. Yes.

Q. Is there any way you can put that into dollars and cents, the amount of that grievance, the injury that results from that not being carried in a straight line? A. I say I think the injury to that property would be whatever it would cost to put that on a straight line right through the McKellar river.

THE COURT: Supposing the Government made the straight line, and did the dredging, there would be the value of the land taken? A. Yes, and whatever the cost would be if I had to do it.

Q. Supposing that this is done, how much more valuable would that be on a straight line than it is now? How much more? A. Whatever it would cost, the difference.

THE COURT: You think the increase in value would be compensated by the work that was done? A. Yes." He is asked further as follows by me:—

"Q. As I understand your evidence now, supposing that line is straightened, and the excavation done along the straight line, would this property be benefitted by that, since the turning basin were kept there?

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Would it make any difference straightening it, if the turning basin were kept there? A. It would.

"Q. To what extent? A. I would have less frontage, but I would have it straighter."

Counsel for the crown then made the following offer:—

MR. DOWLER: I will make an offer, on behalf of the Crown, to straighten that out. I will make that as a binding offer.

MR. MORRIS: There would be an undertaking in the judgment?

MR. DOWLER: Yes.

THE COURT: The Crown is undertaking to take this line marked 505 feet?

MR. DOWLER: We practically fyle a new plan.

THE COURT: You undertake that?

MR. DOWLER: To dredge in accordance with that plan. I will put in a written undertaking, with the plan attached. I will file a written undertaking."

This undertaking is in addition to the general undertaking which is applicable to all the parcels. The result of this undertaking will be to leave the land with a frontage of 505 feet on the Kaministiquia. The block of land consisted of about 12 acres, of which the 1·29 acres, and the additional small portion that will be required in order to straighten the land formed a part. Walsh valued the land at between $3,000 and $4,000 an acre. He states that the property was worth before three to four thousand an acre, and it has that value from being on the Kaministiquia River. William McCall places the value at $3,000 an acre . He is asked this question:—

"Q. So that you are basing your valuation on this property on the theory that you would some day

have a chance of getting a dock outside of the road allowance? A. Yes.

Q. And be able to keep all your acreage? A. Yes

Q. So that your valuation at $3,000 an acre is based on that theory? A. Yes."

He is asked the following questions:—

"Q. Is it not a fact, bringing it down to a matter of common sense, that it is the development of Fort William for shipping purposes by dredging and deepening and widening the river that is bringing up all of this property into value? A. It is decidedly.

Q. That is what makes it? A. Yes.

Q. Is it not a fact that all of these large works coming in here and building up the city and making it a large shipping point, and the work done by the Government to bring about all that state of affairs that makes all of this dockage property valuable? A. Yes.

Q. That is the position? A. Yes."

Mr. McCall was a witness called by the owners of the land, and I think he fairly summarizes the situation in the question and answers which I have quoted. There can be no possibility of doubt that the increase of value to $3,000 an acre is owing to the works in question. Some point was sought to be made of the fact that there is a turning basin. It is stated that the effect of this turning basin would be to materially injure the lands for dockage purposes, and Captain McAllister was called in support of this theory. It is admitted that the river, at the place in question, is 710 feet in width from bank to bank: that is with the turning basin included. Captain McAllister, who gave evidence in regard to the danger, was basing his evidence on his knowledge of Owen Sound, where the turning basin was only 350 feet in width, and of

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course Captain McAllister had to admit that where the width was 710 feet it made all the difference.

I do not think the turning basin is going to injure the property for dockage purposes. All that I have said in regard to the previous cases applies to this particular case. I think that, having regard to the manifest benefit to the rest of the lands, if the estate is allowed, with regard to this parcel three, at the rate of $1,000 an acre, together with the two undertakings referred to, they will be fully indemnified.

The acreage can be ascertained when it is known what further quantity of land is taken for the purpose of straightening the land, according to the undertaking of the Crown counsel.

THE KING *v.* HORNE.

This is a property situate on island number two. The expropriation was on the 12th May, 1909. The area taken was 1·49 acres . The crown offers $1,490. The defendant claims $25,000. In the defence he states that the said block of land, at the time of the depositing of such plan, possessed a valuable water or harbour frontage on the Kaministiquia river, and the said land was suitable and in demand for docks grain storing and handling, terminal elevators, warehouses, large industries, and other lake and rail terminal facilities, as well as being valuable for subdivision and of great and increasing value. The block of land prior to the expropriation contained 11 acres. What is left after the expropriation is about 9½ acres. Prior to the expropriation he had a frontage on the Kaministiquia river of 317 feet. By reason of the straightening by virtue of the works undertaken by the Government, he is now left with a frontage of 527 feet. In his evidence he states:—

"Q. Having that increased frontage on the Kaministiquia river, does that give increased value to your acreage? A. Yes."

While by his defence he claims $25,000, in his evidence he puts it in this way:—

"Q. Then your claim is for the actual acreage taken at $5,000 an acre? A. Yes."

In his evidence Horne was asked:—

Q. Would not your increased frontage enable you to divide it up so as to get more manufacturing sites? A. Yes.

Q. In that way it would be an advantage? A. Yes.

THE COURT: It would occur to me if you had only a frontage of 317 feet, it would be limited, perhaps, to one manufacturing purpose, but if you increased that frontage to 527, you make this lot available for more than one industry, and in that way it would be a great advantage? A. Yes.

Q. Then by getting an increased frontage, you have an opportunity of perhaps selling it for two or three industries? A. Yes.

Q. But you had not with the narrow frontage 317 feet? A. Yes.

Q. You have a right to the dock here as you had before? A. Yes.

Q. You might have two boats or and two or three separate industries; is not that an additional benefit? A. Yes.

THE COURT: And then it all depends on your right to put your docks on the river; the dedication of that is for an industrial purpose? A. Yes.

Q. Namely because it is on the Kaministiquia river ? A. Yes.

Q. That is the destination of all of this island property? A. Yes, I think a lot of it will be used

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for that purpose. I thought at one time the island would be a first class residential property, but I think it will come down to a second class residential property, and gradually it will be eliminated from that for the small class of workmen's and mechanics' houses.

Q. That is the ultimate destination? A. Yes.

Q. In the working out of the ability to put docks on the river on the island side of it, is that of much consequence to the property owners? A. Yes.

Q. As a matter of general use of the shores of those islands for dock purposes, are they not made much more feasible by widening the channel to 500 feet to make better navigation? A. Yes."

It is needless to repeat what I have already dwelt upon in dealing with other cases. The benefit of of the works in regard to Horne is greater than to others in that he gets this increased frontage. I think, having regard to the undertaking, the offer of the Crown is ample, and I give judgment for that amount.

THE KING *v.* OAKLEY, LAVERTY *et al.*

The lands expropriated in this case are situate on island number one and they front on the Kaministiquia river. There are two parcels expropriated, one containing .93 acres, and the other .98 acres. They are to be seen on plan Exhibit No. 9 in the consolidated cases, marked "Enoch Brown." The Crown offers at the rate of $1,000 an acre, namely $930 for the first parcel and $980 for the second. The defendant claims the modest sum of $25,000. His defence puts it that the said block of land at the time of the depositing of such plan possessed a valuable water or harbour frontage on the Kaministiquia

river, and the said islands were suitable and in demand for docks, grain storing and handling, terminal elevators, warehouses, large industries and other lake and rail terminal facilities, as well as being valuable for subdivision, and of great and increasing value. Laverty, who is a real estate agent, purchased the block containing 18 acres on the 21st September, 1908. The purchase price was $20,000, or equal to $1,100 an acre. The road allowance had been taken by the first expropriation. Laverty states in his evidence that on the 12th May, 1909, they estimated the property as being of a value of $90,000, certainly a remarkable increase between September 21st, 1908, the date of his purchase, and the 12th May, 1909.

He is asked:—

"Q. Your property has a good depth? A. Yes, I guess it averaged about 1,200 feet.

Q. And you could stand this piece being expropriated off the front? A. Yes.

He states his claim in his evidence as follows:—

Q. What would it be worth per acre, taking it from the back? A. Just considering it as acreage?

Q. Yes. A. It was worth $3,000 an acre.

Q. Then your claim is .93 acres, plus the .98 acres, at $3,000 an acre? A. Yes.

Q. And no consequential damages? A. Yes.

Q. That is the whole claim? A. Yes.

Q. That makes a total of $5630? A. Yes."

I pointed out that in his defence the claim made was about $25,000. On cross-examination by Crown counsel he makes this important statement.

"Q. What did you mean by the $90,000: How did you arrive at that? A. In this way: taking it as acreage with water frontage, we considered it worth $5,000 an acre.

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Q. That is the whole 18 acres? A. Yes.

Q. That is to say, the water frontage adds to it a value of $2,000, an acre to the whole 18 acres? A. Yes.

THE COURT: You think that having the water front it would increase your value $2,000 an acre? A. Provided we had our water frontage.

Q. What do you mean by water frontage? To build on the river, or what? A. Yes, to build on the river.

THE COURT: You mean if you could build into the river it would be worth that? A. Yes.

Q. On the edge of your own property? A. Yes.

Q. You are talking of putting docks at the edge of your own property? A. Yes.

Q. And having it accessible to the river?

Q. And your opinion is that the added value to your whole 18 acres by reason of your being able to put the docks there would be $2,000 an acre? A. Yes.

Q. So that if you had not the right to put docks and could not get the right to put docks on the land as you bought it, you could not put your value up to $5,000 an acre, could you? A. If we could it would be worth $5,000 an acre.

Q. But if you could not put the docks there? A. It would be considered as acreage worth $3,000.

Q. It is worth $3,000 an acre, apart altogether from frontage? A. Yes, that is what I mean.

Q. But the frontage meant $2,000 an acre to the whole block to you? A. Yes.

Q. It would be of that much advantage to you to be absolutely certain that you would get a frontage available for you? A. Yes. I would consider it worth $5,000 an acre.

Q. You would consider it worth $2,000 an acre if you could get the frontage available to you for your use? A. $2,000 more."

I have quoted this portion of his evidence, as it exemplifies what I have previously stated, that the advantage gained by these land owners by reason of the works is not merely an advantage to the particular acreage expropriated, but to the whole block, and would, according to Mr. Laverty's statement, amount to about $36,000 on the whole block of 18 acres.

Cooper, another witness, puts it in this way:—

"Q. Does not the value of your water frontage depend on your ability to put docks there: that $2,000 you have added is for your supposed ability to put docks there? A. Yes.

Q. That is what it is added for? A. Yes."

I think, without repetition, that claimant is well compensated, under the circumstances of the case, and I award judgment for the amount offered by the Crown.

THE KING *v.* ROWAND AND THE KING *v.* TAIT.

The properties, parts of which were expropriated, front on the Mission river. They adjoin each other. The expropriation was on the 12th May, 1909. In the Rowand case the area of land taken was 1.07 acres. In the Tait case the area of land taken was .67 acres. In the Rowand case the tender of the Crown is $535. The defence in each case set up that the said block of land at the time of the depositing of such plan possessed a valuable water or harbour frontage on the Mission river, and the said lands were suitable and in demand for docks, grain storing and handling, terminal elevators, warehouses, large

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industries and other lake and rail terminal facilities, as well as being valuable for subdivision, and of great and increasing value.

Lille, who is a real estate agent, in giving his evidence stated that it was generally known that the Mission river would become dredged as far back as the year 1906. According to his view, as soon as the Grand Trunk Pacific located their terminals on the 1,600 acres of land purchased by them, it seems to have been taken for granted that sooner or later the Mission river would be made navigable. In point of fact, at the date of the expropriation in question, these lands belonging to Rowan and Tait were separated from the Mission river, by the road allowance to which I have referred, and the Mission River itself was not at that time a navigable river. By reason of the works of the Government the road allowance has been got rid of, the Mission river is to be dredged to a depth of 25 feet, and will have a width of 500 feet, and no doubt by reason of these works, the allegations in the defence which I have quoted will probably come true. It is apparent that the effect of these works will be to enormously add to the value of the balance of the land not expropriated by the Crown. It is needless to reiterate what I have repeated so often. I think, having regard to the undertaking, the sums offered by the Crown are ample, and I give judgment to Rowan for the sum of $535 and to Tait for $335.

I think I have dealt with all the cases which were tried before me. Except in the one case of Rochon, I have not added anything for what may be called compulsory taking, as I think the Crown has acted liberally in not exacting the full claim which it might

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have set up for the increased value to the various lands arising by reason of the works.

Judgments accordingly.

Solicitor for the plaintiff: *W. McBrady.*

Solicitors for the defendants: *Morris & Babe.*