

1914
 June 6.

HIS MAJESTY THE KING, ON THE INFORMATION
 OF THE ATTORNEY-GENERAL OF CANADA,

PLAINTIFF,

AND

MARY E. DAVIS, ARTHUR J. DAVIS AND

JAMES FINDLAY,

DEFENDANTS.

Expropriation—Compensation—Water lots—Value—Summer resort.

In estimating compensation for the expropriation of water-front property by the Crown for the purpose of harbour fortifications, mere prospects of developing the property into a summer resort cannot be taken into consideration in arriving at its true market value.

INFORMATION for the vesting of land and compensation therefor in an expropriation by the Crown.

Tried before the Honourable Mr. Justice Audette,
 at Halifax, N. S., May 18, 19, 1914.

T. S. Rogers, K.C., for plaintiff.

H. McInnes, K.C., and *J. A. McDonald*, K.C., for
 defendants.

AUDETTE. J. (June 6, 1914) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, setting forth that certain lands, belonging to the defendant, Mary E. Davis, have been taken and expropriated, under the provisions of the *Expropriation Act*, for the purpose of a public work of Canada, viz.: the fortification of McNab's Island, in the Harbour of Halifax, N. S.

The plan and description of the said lands were deposited, on July 29th, 1912, in the office of the Registrar of Deeds for the County of Halifax, N. S.

The area taken is two acres and fifty-two hundredths of an acre, more or less.

The Crown tendered on July 3rd, 1912, the sum of \$1,080, mentioned in the information herein.

The defendants at bar aver by their plea that the amount tendered is not sufficient compensation and claim the sum of \$5,000.

On behalf of the defendants the following witnesses were heard: Arthur J. Davis, John W. Regan, William E. Studd, Frederick W. Bowes and Robert Theakston.

Here follows a brief summary of the evidence:

Arthur J. Davis, testified his wife, in 1908, purchased, for the sum of \$7,500, 47 acres of lands shown on plan filed herein as Exhibit "D," within the red lines to the west of the two acres and 52-100 of an acre expropriated herein, whereof the said 2.52 acres form part.

About 3 years ago he also bought lots 39 and 41, shewn on said plan Exhibit "D," for the sum of \$125 each. He thinks each lot is about 82 feet by 100 feet. He paid \$250 for the two lots.

On January 18th, 1909 he also bought lots 31, 29, 27, 25, 1 and 2, and paid for the six lots the sum of \$1,500.

A great deal has been said in this testimony with respect to a company called the "McNab Resort Co., Ltd.", organized about 3 or 4 years ago by the Davises with the view of erecting a summer hotel on lot No. 1, using part of the grounds on the waterfront of the 2.52 acres as part of the scheme, and

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mentioning also the idea of using the shore of the 2.52 acres lot for access thereto by a wharf.

John W. Regan, an investment broker, of Halifax, values the 2.52 acres at \$1,800 to \$2,000 as their market value, and at the sum of \$3,600 to \$4,000 with the view of the hotel scheme on the other lot.

William H. Studd, a real estate broker, values the 2.52 acres at \$1,000 an acre, and says that within the last 5 years property on McNab's Island might have increased 25 per cent. to 30 per cent. in certain cases.

Frederick W. Bowes values the 2.52 acres at \$4,750 including all damages resulting from the expropriation; but in arriving at this valuation, based on a subdivision of the acreage into building lots, he was not aware of the "clearance rights" vested in the Crown, whereby among other things, no buildings could be erected from the high water mark to the upper end of the Hugonin's Battery, as shewn on plan, Exhibit "D"—almost a third of the best part of the acreage. Under these circumstances he said he would have to cut down his values and would really have to re-value.

Robert Theakston values the land at \$800, with a decrease of 25 per cent. if buildings cannot be erected in the front, bringing the value down to \$600.

On behalf of the Crown the following witnesses were heard: Harry Knight, George E. Nichols, Colonel Frederick H. Oxley and McCallum Grant.

Harry Knight, who had been surveyor for the Royal Engineers since 1905, describes the land in question as rough rock, exposed rock with undersoil of gravel and rock. The highest point is on the crest of the hill by the position finding cell, about 60 feet over the level of the water, 130 feet distant from the shore, with a slope of 55 in 80 feet, more than

one in two. He says the land where the lighthouse is has an area of about 2 acres, which were bought about 1905 for \$462.

George E. Nichols has been in the real estate business for 11 years in Halifax, describes the 2.52 acres as a narrow lot, with a high, steep front of about 50 feet, unfit for agricultural purposes. Taking everything into consideration, places a value of between \$350 to \$400 per acre, upon the 2.52 acres. He adds if the owners could not build a wharf on the front it would be worth \$100 less per acre. He says the access to the back lots to the west, through the 2.52 acres, is not practical, the expense would be equal to the value.

Col. Frederick H. Oxley values the 2.52 acres at \$400 an acre, without being aware of the "clearance rights" vested in the Crown. He valued the Perrin lands immediately adjoining to the south at \$400, and they were under cultivation. However, he was ready to give the same price to the present owners, notwithstanding the rocky state of the land—and that the close proximity to the fort would decrease their value \$100 an acre. He says the Hesslein lots to the north are worth somewhat more than the Davis lots.

McCallum Grant, without taking the clearance right into consideration, but considering the waterfront, values the Davis land at \$400 per acre. He says the Hesslein lots were more valuable than the present lots.

This closes the evidence.

Dealing with the waterfront upon which so much stress has been laid, it will be well to say at the outset that as these lands abut at high water mark in a public harbour, the paramount right in the fore-

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shore is vested in the Crown in the right of the Federal Government.

Coming to the question of value, a great deal has been said with respect to the project of a summer hotel business to be worked out and operated by the McNab Resort Company. The place was, for a few years recently, operated with that view by means of a steamboat, and the renting of picnicking grounds. It did not prove very successful. How could values be established on the foundation of such a scheme? The whole proposition might prove an absolute failure—the success of it depending more upon the industry and capacity of the company running it, and the commercial possibilities of such a scheme in Halifax, than in the intrinsic value of the property. We are not here face to face with such a scheme in full operation, making money and proving itself successful; but with the mere prospects of such a plan at Halifax. The success of such an enterprise is too hypothetical and too remote to be placed seriously in the scale in arriving at the true market value of these lands. Such testimony as that of witness Regan defeats itself on its very face. The 2.52 acres for hotel purposes reckoned at his figures of \$4,000 an acre, giving us \$10,000 in round figures for the 2½ acres, appears on its face preposterous, when we realize what was paid for these lands a few years ago. The 47 acres of which these 2.52 acres formed part were bought in 1908 for \$7,500. Three years ago Davis bought lots 39 and 41, of about 82 by 100 feet, for \$250 for the two lots. In 1909 he bought the lots 1, 2, 31, 29, 27 and 25 for \$1,500, equal to \$250 a lot, on area shewn on Exhibit “D”. Then Perrin, the adjoining proprietor to the south, sold to the Government at the time

of the expropriation 19 acres of cultivated lands at \$400 an acre. Moreover, the lands taken are all immediately adjoining a gun range, subject to all the disadvantages of such a neighbourhood.

Taking all of these circumstances into consideration with respect to this land, this Court has come to the conclusion that the amount tendered by the Crown, namely, \$400 per acre, is a just and liberal compensation to the defendants.

There will be judgment as follows:

1. The lands expropriated herein are declared vested in the Crown from the date of the expropriation.

2. The sum of \$1,080 tendered by the Crown, is a just and liberal compensation for the lands taken and for all damages resulting from the said expropriation, which said sum the defendant, Mary E. Davis, is entitled to be paid upon giving to the Crown a good and sufficient title, free from all mortgages and encumbrances upon the said property. Failing, the said defendant to give the Crown such title, the money will be paid to the mortgagee, James Findlay, in satisfaction *pro tanto* of such mortgage and encumbrance as mentioned in the pleadings herein.

3. The Crown will recover the costs of the action. The mortgagee will be entitled to recover the sum of \$25 for his costs against the Crown.

Judgment accordingly.

Solicitors for plaintiff: *Harris, Rogers & Henry.*

Solicitors for defendant: *McInnes, Mellish, Fulton & Kenny.*

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