

1900
 June 11.

THE QUEEN ON THE INFORMATION
 OF THE ATTORNEY-GENERAL FOR THE } PLAINTIFF;
 DOMINION OF CANADA..... }

AND

HENRY S. HARWOOD AND OTHERS.....DEFENDANTS.

*Expropriation of land for canal purposes—Damage to remaining lands—
 Access—Undertaking to give right of way—52 Vict. ch. 38, sec. 3—
 Effect of in estimating damages—Future damages—Agreement as to—
 Increased value by reason of public work.*

Defendants owned a certain property situated in the counties of Vaudreuil and Soulanges, a portion of which was taken by the Crown for the purposes of the Soulanges Canal. Access to the remaining portion of the defendants' land was cut off by the canal, but the Crown, under the provisions of 52 Vict. ch. 38, sec. 3, filed an undertaking to build and maintain a suitable road or right of way across its property for the use of the defendants. The evidence showed that the effect of this road would be to do away with all future damage arising from deprivation of access; and the court assessed damages for past deprivation only.

2. It having been agreed between the parties in this case that the question of damages which might possibly arise in the future from any flooding of the defendants' lands should not be dealt with in the present action, the court took cognizance of such agreement in pronouncing judgment.
3. In respect to the lands taken the court declined to assess compensation based upon the consideration that the lands were of more value to the Crown than they were to the defendants at the time of the taking. *Stebbing v. The Metropolitan Board of Works* (L. R. 6 Q. B. 37), and *Paint v. The Queen* (2 Ex. C. R. 149; 18 S. C. R. 718) followed.

THIS was an information filed by the Attorney-General for the Dominion of Canada concerning the expropriation of certain lands for the purposes of the Soulanges Canal.

March 15th, 16th and 17th, 1900.

The case was tried at Montreal.

N. Charbonneau for the defendants: The Potsdam sandstone on this property makes it of great future value. The Government has already found it so, and has used a large quantity of this stone for the manufacture of cement for the walls of the canal. This element of value ought to be taken into consideration by the court in assessing the compensation for the land taken.

The value does not subsist entirely in the present, but it is to be assessed in respect of the prospective capabilities of the property. *Mills on Eminent Domain* (1).

C. A. Harwood, following for the defendants, cited *Burton v. The Queen* (2).

N. Hutchison Q.C. and *A. Globensky Q.C.* for the plaintiff, contended that the land was only valuable as a quarry, and that it was its value as such at the time of the expropriation that should be considered.

Mr. *Harwood* replied.

THE JUDGE OF THE EXCHEQUER COURT now (June 11th, 1900) delivered judgment

The questions in controversy have to do with the amount of compensation to which the defendants are entitled for the value of certain lands taken for the Soulanges Canal, and for damages to other lands owned by them, occasioned by the construction thereof. The parties are very far apart. The Crown offers the defendants the sum of \$3,030 for the land taken and for damages, and asks, among other things, that that sum be declared to be a just and sufficient compensation to the defendants. The following are the particulars of the defendants' claim :

(1) Sec. 173.

(2) 1 Ex. C. R. 87.

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 Argument
 of Counsel

1900 ~~~~~ THE QUEEN v. HARWOOD. ----- Reasons for Judgment. -----	1. Value of 7 arp. 61 perches, 4 yards deep at 10 cents per cubic yard.....\$ 12,446 40 2. Value of 20 arp. 23 perches, same depth and price 33,087 20 3. Damages through the balance of the lot being injuriously affected 50,000 00 4. Ten per cent. of real value of land taken, for compulsory taking..... 4,553 46 <hr style="width: 100%;"/> <div style="text-align: right;">\$100,087 06</div>
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With reference to the damages, the Crown on the trial, and under the authority of 52 Vict. ch. 38, s. 3, gives the following undertaking, that is to say :

To give a right of way from the property of the defendants not expropriated to the entrance pier of the Soulanges Canal, by means of a road thirty feet wide, to be built and maintained by the Government of Canada, said road to cross the Government property east of the east end of the lower reservoir as indicated on plan "A" of the defendants filed in this cause, from letter "X" to letter "Y," including the right to use the pier as loading docks along its north side.

The effect of carrying out this undertaking will be to do away wholly with any future damages arising from the taking of the defendants' land and the construction of the canal, assuming always that the canal is so constructed, or will, when it is fully completed, be so constructed, that the lands which the defendants now hold adjacent to the canal will not be flooded by water therefrom. As to that it was at the trial agreed that the defendants' right to damages for any flooding of their lands (if any should hereafter occur) by reason of the canal, should be reserved. That leaves then to be considered, in determining the compensation to which the defendants are entitled, the question of the value of the lands taken and the damages hitherto

sustained by them by reason of the taking of such lands and the construction of the canal.

Whatever value the lands in question have arises from the fact that they contain a large deposit of Potsdam sandstone. The value depends upon the demand for this stone and the cost of getting it to market. During the construction of the canal a large quantity excavated from the prism of the canal where it passes through lands taken from the defendants, was used for the purpose of making concrete, for which purpose it was very suitable. And it is on this circumstance that the very large claim made by the defendants is based. But it is clear, it seems to me, that the court cannot give effect to any such consideration. Any demand there was for this stone for this purpose was temporary and occasioned by the construction of the canal. Having taken the defendants' land the Crown was of course entitled to use the material excavated therefrom, in and for the construction of the canal, in any way it saw fit. What the defendants are entitled to on this branch of the case is the value of the land at the time of the taking (1). If adjoining lands of the defendants are made more valuable by the construction of the public work, that may in a proper case have to be taken into account by way of set-off in determining the compensation to which they are entitled. (*Idem.* s. 31). But there is no authority for giving the defendants larger damages because the lands taken may be of more value to the Crown than they were to the defendants at the time of taking. *Stebbing v. The Metropolitan Board of Works* (2); *Paint v. The Queen* (3).

On the evidence submitted and in view of the undertaking given, and the reserve made, I assess the

(1) The Exchequer Court Act, s. 32. (3) 2 Ex. C. R. 149; 18 S. C. R. 718.

(2) L. R. 6 Q. B. 37.

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| 1900<br>THE<br>QUEEN<br>v.<br>HARWOOD.<br>———<br>Reasons<br>for<br>Judgment<br>——— | compensation to be awarded to the defendants as follows:<br>Value of the lands taken.....\$ 4,000. 00<br>Damages for the past ..... 1,000 00<br>Interest on \$1,089.83, value of the part of the land first taken, from February 23rd, 1891, to June 11th, 1900, at six per cent.. 607 55<br>Interest on \$2,910.17 (being the balance of the \$4,000) from August 8th, 1892, to June 11th, 1900, at six per cent..... 1,369 12<br><hr style="width: 10%; margin-left: auto; margin-right: 0;"/> \$6,976 97 |
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There will in other particulars be judgment as prayed for, and there will be a declaration that the defendants are entitled to have the undertaking mentioned carried out and the question of any future damages that may arise from the flooding of the defendants' lands adjacent to the canal by reason thereof, is reserved.

The defendants will have their costs.

*Judgment accordingly.*

Solicitor for plaintiff: *A. Globensky.*

Solicitor for defendants: *C. A. Harwood*

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