

1915
Jan. 14.

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

AND

WILLIAM McTAVISH BANNATYNE AND
CHARLES VOKES, EXECUTORS OF THE LAST
WILL OF ANNIE BANNATYNE,
DEFENDANTS.

*Expropriation—Compensation—Effect of abandonment—Advantages
—Set-off.*

An abandonment by the Crown, under sec. 23 of the *Expropriation Act*, of part of the land taken for a public work, must be taken into account in assessing compensation therefor; and any benefit or advantage accruing from the construction of the public work must likewise, under sec. 50 of the Act, be taken into account and consideration given to it by way of set-off.

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

Tried before the Honourable Mr. Justice Audette,
at Winnipeg, Man., December 12, 1914.

J. G. Harvey, K.C., for plaintiff.

C. Isbister, for defendant.

AUDETTE, J. (January 14, 1915) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that under the provisions and authority of the *Expropriation Act*, certain lands and real property, belonging to the defendants, were expropriated for the purposes of the improvements in the Red River, at

St. Andrew's Rapids, Manitoba, a public work of Canada.

By the deposit of a plan and description in the proper Registry, on May 27th, 1907, a parcel or tract of land containing (0.68) sixty-eight hundredths of an acre was expropriated. However, subsequently thereto, it having been found that a portion of the said (0.68) sixty-eight hundredths of an acre, namely (0.24) twenty-four hundredths of an acre, were unnecessary for the purposes of the said public work, and no compensation money having as yet been paid, the said (0.24) twenty-four hundredths of an acre were, under the provisions of sec. 23 of the *Expropriation Act*, abandoned on July 11th, 1913, by the registration in the proper Registry, of a writing to that effect, under the hand of the Minister.

As a result of the said expropriation and abandonment, the Crown is now taking only (0.44) forty-four hundredths of an acre, as more particularly described in paragraph five of the said information.

The defendants' title to the lands in question is admitted.

The Crown, by the information, tenders the sum of \$205 and the defendants, by their plea, aver *inter alia*, that this sum is wholly and grossly insufficient and inadequate and claim the sum of \$3,000.

From the correspondence filed herein, as Exhibits Nos. 20, 16, 17, 18, 19, C and D, it appears that Mrs. Bannatyne, who died on June 17th, 1907, had in 1906 through her solicitor, Mr. Morrice, adjusted, fixed and accepted the compensation to be paid her for the lands then contemplated to be expropriated, on a basis of \$200 an acre. Although the sketch mentioned in Exhibit 17 has not been filed (it could not be found), it is obvious that the description therein

1915
THE KING
v.
BANNATYNE
AND VOKES.
Reasons for
Judgment.

1915

THE KING
v.
BANNATYNE
AND VOKES.

Reasons for
Judgment.

mentioned as referring to that portion of lot 107 to be expropriated must have been a sketch for the (0.68) sixty-eight hundredths of an acre, the area of the original expropriation.

Mr. Morrice, Mrs. Bannatyne's solicitor, was heard as a witness, and he says that she had left the matter to be managed by him. He further told us he was a better real estate man than a lawyer, and by this statement, I assume, he wished to convey the idea that he was well informed upon the subject of real estate. And it is, indeed, upon his knowledge as a real estate agent that I wish here especially to rely in dealing with this case, and to say when he made that agreement, at \$200 an acre, he knew whereof he was speaking. He gave us an uncontroverted statement of the state of the real estate market, as follows: In 1882 there was a tremendous boom, with a break in 1883. From 1883 to 1891 values went down. In 1904 he was buying property for less than the accumulated taxes. In 1907 there was no market and no sale to his knowledge in that neighbourhood in question.

In October, 1900, Mrs. Bannatyne bought an acre of lot 108, that is, 66 feet frontage by 660 feet deep, as shown on plans filed, for the sum of \$30, and built a house upon this piece of land of 66 feet frontage. On June 17th, 1907, under an agreement of sale of April 16th, 1901, she also bought for the sum of \$450 the inner two miles of lot 107. Moreover, from Exhibit No. 7—an application to bring the land under the operation of the *Real Property Act*, made on June 28th, 1907—it appears and it is therein stated that the whole lot 107 is worth \$900. And by Exhibit No. 8, it also appears that lot 108, excepting the small area hereinafter mentioned,

would be of a value of \$2,200. In all these cases the consideration paid would bring the price per acre very low indeed.

At the date of the expropriation Mrs. Bannatyne, therefore, held in unity, the 66 feet frontage on lot 108 with the full width of lot 107. After the expropriation and the abandonment, the defendants are left with a frontage of 72.6 feet on lot No. 107, together with 66 feet on lot No. 108, making in all a frontage of 138.6 feet. If it was thought advisable to build, as Mrs. Bannatyne did, on the 66 feet of lot No. 108, *a fortiori* there is ample space to now build again at the same place, with the result that 72.6 feet are left, out of which to make a roadway to the back of the property and with some substantial additional space added to the 66 feet in question upon which the building can be erected.

The Crown's evidence with respect to the value of the land at the time of the expropriation is very meagre and of very little help. However, upon the evidence, as a whole, I have come to the conclusion that the sum of \$205 tendered by the information, for the (0.44) forty-four hundredths of an acre, is ample and sufficient under the circumstances, in satisfaction of the land taken and all damages, if any, resulting from the expropriation.

One cannot be unmindful of the fact that this change of front, from a demand of \$200 an acre to the sum of \$3,000 claimed by the defendants, is the result of an afterthought, and that this sum of \$3,000 is, under the evidence, both unjustifiable and extravagant.

Under sub-sec. 4 of sec. 23 of the *Expropriation Act*, it is provided that the abandonment of a part of the land taken, as provided by that section, should

1915

THE KING.
v.
BANNATYNE
AND VOKES.Reasons for
Judgment.

1915

THE KING
v.BANNATYNE
AND VOKES.Reasons for
Judgment.

be taken into account, with all the circumstances of the case, in assessing the amount of compensation for the land taken.

The Crown has had the possession, occupation, enjoyment and use of the twenty-four hundredths of an acre from the date of the expropriation, viz., May 27th, 1907, to the date of the re-vesting of the same on July 11th, 1913. The owners, before the expropriation, were getting \$60 a year for the rent of that whole piece of land, and using this ratio as a *datum* to work upon, I will fix, in round figures, the compensation for the retention by the Crown of the twenty-four hundredths of an acre during a period of a little over 6 years at the sum of \$130.

It is true that the erection of the dam in question has had the effect, from the time of the expropriation, to enhance the value of this property in common with the properties in the neighbourhood; but under sec. 50 of the *Exchequer Court Act*, the Court, in assessing the compensation, should take into account and consideration by way of set-off, any such benefit or advantage accrued or likely to accrue by the construction of a public work. An additional reason, indeed, to confirm that under the circumstances,—the amount tendered is fair, reasonable and even liberal.

While the amount recovered by the owners is larger than the amount tendered, they have not succeeded upon the main issue of the controversy and they should not have full costs. Availing myself of the provisions of Rule 290, I hereby fix the costs at the sum of one hundred and twenty-five dollars.

Therefore, there will be judgment as follows:

1st. The land expropriated herein, subject to the abandonment, namely, the forty-four hundredths of

an acre, are hereby declared vested in the Crown from the date of the expropriation.

2nd. The compensation for the land so expropriated, and all damages resulting from the said expropriation and abandonment, is hereby fixed at the sum of \$335 and interest.

3rd. The defendants, upon giving to the Crown a good and sufficient title, free from all incumbrances, are entitled to recover the said sum of \$335, with interest thereon from May 27th, 1907, to the date hereof, together with the costs, which are hereby fixed at the sum of \$125.

Judgment accordingly.

Solicitors for plaintiff: *Harvey & Jenkins.*

Solicitors for defendants: *O'Connor, Isbister & Morton.*

1915

THE KING
v.
BANNATYNE
AND VOKES.

REASONS FOR
JUDGMENT.