

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

1913  
March 4.

PLAINTIFF,

AND

THE QUEBEC IMPROVEMENT COMPANY,  
LIMITED,

DEFENDANT.

*Expropriation—Compensation—Value—Agricultural or development  
—Railways.*

Lands in the vicinity of what promises to become a railway junction have a higher value than that of land for agricultural purposes, and are to be valued as land of the industrial or building class, in estimating the amount of compensation for their expropriation by the Crown.

**I**NFORMATION for the vesting of land and compensation therefor in an expropriation by the Crown.

Tried before the Honourable Mr. Justice Audette,  
at Quebec, January 13, 14, 17, 1913.

*G. G. Stuart, K.C., and A. Dion, for plaintiff.*

*Louis St. Laurent, K.C., and Elzear Baillargeon,  
K.C., for defendant.*

AUDETTE, J. (March 4, 1913) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears that His Majesty the King, under the authority of 3 Ed. VII, ch. 71, expropriated certain lands for the purposes of the National Transcontinental Railway, a public work of Canada.

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A plan and description were deposited with the Registrar of Deeds for the County of Levis, P. Q., on May 13th, 1907, for an area of fourteen and eighty hundredths acres. A second plan and description were also deposited, as aforesaid, on November 30th, 1907, for an area of thirty-two and fifty-four hundredths acres. And a third plan and description were further deposited, as aforesaid, on June 4th, 1909, for an area of two and thirty-two hundredths acres.

The total area expropriated is forty-nine and two-thirds acres, for which the Crown tenders the sum of \$250 per acre, making the total sum of \$12,415.

The defendant, by his plea, avers that the amount tendered is insufficient and claims the sum of \$49,660.

The defendant's title to the land in question has been satisfactorily established.

The defendant, by counsel, stated that the fore-shore of the River Chaudiere did not belong to them, and no claim is made herein for riparian rights, as they do not pretend to be riparian owners.

The following witnesses were heard on behalf of the defendant, viz.: Robert Stewart, Joseph B. Bourassa, Percival W. St. George, Michel Lemieux, Napoleon Roy, Frederick Shaw, Donald Barton, Stuart Oliver and Pierre Fontaine. Here follows a brief summary of their testimony, viz.:

*Robert Stewart*, the manager and secretary of the Quebec Improvement Company, says that the defendant is a land company, owner of the lands in question, situate at about a quarter of a mile from the south approach of the Quebec Bridge. The three pieces of land expropriated are respectively marked A, B and C on the plan filed as Exhibit "D", and all three form part of what is known as the Mc-

Naughton property. Block A is bounded on the east by the government property already expropriated and assessed in this court for the right-of-way of the Transcontinental. This witness files as Exhibit "G" a resolution by the municipality of St. Romuald exempting from taxation, for a period of 25 years, from February 19th, 1904, all factories and industrial undertakings established upon the defendant's property. Part of the Price property, also owned by the defendant, on the north side of the Chaudiere towards the St. Lawrence, was divided into building lots, with some 12 to 14 lots sold in 1904, having refused to sell any more then because the price was too low when they sold only from 6 to 17 cents a foot. One house only has been built there so far. The McNaughton property is not actually divided in building lots, but is held for that purpose. Plan "I" is filed showing the Village of Charny marked "C",—the church by "X" on lot 252, the station nearly opposite the church,—the Chaudiere Curve is indicated by letter "A",—and the Chaudiere station is indicated by letter "B."

The Transcontinental passes at Block B under the Grand Trunk Railway, in a cut of about 30 feet deep, and the highway is carried over the Transcontinental by a steel overhead structure. Block C is on a level just adjoining the G. T. Railway, and the point marked C. C. abuts on the 30-foot cutting.

The actual price paid for the McNaughton property in 1904 was \$10,000. At that date between 6 to 8 acres of the space between A and B was covered with shrubs, and the balance was cleared land used for agricultural purposes. The part between C and the road to St. Jean Chrysostome is cleared and the angle between B and C has never been cleared. Since

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their purchase, with the exception of the first year, the balance of what has not already been expropriated, has been rented at \$100 a year for farming purposes,—enough to pay taxes and maintaining the road. The dump adjoining Block A is between 30 to 40 feet high. So far no factory has been erected on the defendant's property.

No damages were claimed in the former case before this Court respecting Block A, on account of the embankment. He thinks, but is not sure, that the Parishes of St. Romuald and Charny are divided by the highway marked D.D. on plan Exhibit "D." There are 5 or 6 houses along the public road, immediately opposite the end of the McNaughton property.

The witness assigns as the reason for refraining from dividing their property in building lots the fact that the company was not sure about the various railways coming in then, where and how they would come in over the McNaughton property, and accordingly the sub-division was left in abeyance, not knowing how much would be left after the railways had come in.

*Joseph B. Bourassa*, M.P. for the County of Levis and Notary, practising for 32 years, residing at St. Romuald, has some experience in valuing property and has already acted as arbitrator. For the last 12 years, up to 1907, the McNaughton property has increased in value from 200 per cent. to 300 per cent. on account of its neighbourhood, its vicinity to Charny with a dense population where the I. C. R. shops have been transferred, at about half a mile from the property in question, foreseeing its adaptability for industrial purposes.

Values block A when asked to do so as agricultural lands, at about \$400 to \$500 per acre, but he perceives an industrial value and if he considers that value he would arrive at the figure of \$700 an acre. He adds if the Cape, he knows of, passes on the eastern part of block A, that would decrease the value down to \$200 for a quarter of the block, on a farming basis. If the Cape does not pass there his industrial valuation would be for the whole of block A at \$700. However, in 1907 he values this property for industrial purposes and for building lots. In 1907, he also values blocks B and C as a piece of land with the destination of being divided into buildings lots, on the full width of the lots, at an average price of 2½ to 3 cents a foot, equal to about \$1,200 an acre. The witness mentions a sale to Michel Lemieux, in the neighbourhood, at \$250 a lot,—another sale to Alexander Barbeau at \$650 an acre, not far from the property in question.

The value of block A has been damaged or decreased by the high embankment of one-third of its value,—if considered for building lots; but if considered for industrial purposes the decrease he considers hardly appreciable, that it is much less. Approaching the property for industrial purposes he considers that for the part near the river, the neighbouring of such river would increase it by \$500 an acre, in his valuation of \$700, and that would be that someone would develop the water power from which the property would derive benefit. The extremity of the McNaughton property is about one-quarter of a mile from the Village of Charny. The witness finally adds he values block A at \$700 an acre whether it is considered in the agricultural or industrial class. For building lots block A would be one upon

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which it would be difficult to realize its value, because of the high embankment and of the want of a road. Witness owned a piece of land, a couple of miles from the McNaughton property, which has been expropriated by the Transcontinental Railway and the assessment thereof has not as yet been determined. The neighbourhood of the railways is an advantage for the construction of factories there. To have a spur line on this block, the land required for the track would have to be taken from the block itself.

*Percival St. George*, civil engineer, of Montreal, who has been valuing land for expropriation during the last 10 or 11 years, places a value of \$500 an acre upon a third of block A, adjoining River Chaudiere, as power could be had therefrom. He values the balance of the block at \$700 an acre for building purposes. Passing to B and C, the witness says that the triangular space of  $5\frac{1}{2}$  acres between them and marked T upon plan D, has been entirely destroyed. The land to the north of the cut for about 600 feet will be depreciated by one-half for building lot purposes and values that land at about 3 cents a foot. Values blocks B and C at 3 1-3 cents a foot, equal to \$1,400, bringing it to about \$160 a lot. Considers land more valuable than the Breaky lot mentioned in Exhibit "J"—it is closer to Charney, which is about a quarter of a mile,—not much more,—from the McNaughton property. Has visited the property in question herein twice—once for the first expropriation and once on Saturday last, and has no personal knowledge of the value of the property in the neighbourhood; but has taken into consideration, in making his valuation, at least some of the sales, the lay of the land, in such proximity to

a village, and also that it is a railway centre, which will go to increase the value of the land, and then simply used his own judgment as to its value. Block A would be worth \$1,200 to \$1,400 without the embankment and he values it at \$700 because it is depreciated to the extent of 50 per cent. by that embankment.

*Michel Lemieux*, farmer, of Charny, testifies that the Parish of Charny came into existence as a separate parish from St. Jean Chrysostome, 8 or 9 years ago. A church was erected and had to be enlarged twice. The McNaughton property is about 2½ arpents from one of his farms, part of which he sold in building lots. He sold, he thinks, as many as 15 lots—most of them have been built upon—a couple were returned, which he resold at a higher price. However, he is not anxious to sell now, believing it will be sold at a higher figure later on. These lots which he has thus (*concedés*) sold are on the highway. He has others at Charny. The place where he sold these lots is about 9½ arpents from the McNaughton property,—it is the farm he lives on which is 2½ arpents from the McNaughton property.

*Napoleon Roy*, farmer, of the Village of Charny, is proprietor of a farm; a portion of it is opposite the McNaughton property. On the piece fronting on the highway he gave some lots to his children. One of his sons has rented (*concedé*) a piece behind at \$10 a year, on a basis of \$200 for the lot. But his son returned him that lot last year, when he left the place. He rented the McNaughton property for the last four years at \$100 a year, and when parts were sold the rent was decreased in proportion, and he had to maintain the road, which is difficult in winter

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time. One of his sons has it now. On that McNaughton property there are rough pieces; it is a farm the like of which we have not anywhere around our way—what is good is good, and a very large portion is good. The good part has not been taken by the railway.

*Frederick Shaw*, real estate agent, a partner of the firm of Carrick, Limited, of Montreal, has been in real estate business for about 10 years. He drove yesterday, accompanied by Mr. Barton, to the property in question, in order to get an idea of the lay of the land; went to Charny, Chaudiere River, and on the property itself to get a good idea of it. He examined the property with the idea of giving a comparison with other locations which he has seen situated in a similar way around Montreal—such as St. Lambert, across the river from Montreal. It is a city entirely made from the Victoria Bridge going there,—considering that the property in question is bound to turn into a junction centre. Property in St. Lambert is selling at about 3 to 60 cents a foot. Then he wishes further to mention a property 18 miles from Montreal where the Canadian Northern was in a similar condition as this. Witness never dealt in any property in Quebec or its vicinity. The Victoria Bridge he speaks of was opened in 1860, and the increase mentioned in the value of property took place within the last 3 years. The railways that will enter at the place in question herein will be the D. & H., the Central Vermont, the G. T. R., the Intercolonial Railway and some other small lines. The C. P. R. bridge at Lachine, landing on the south, at Caughnawaga, created very little increase in the population, although in operation for over 10 years. But the embankment runs inland for quite a dis-



tance, at an elevation of about 40 feet, and the approaches are very close to an Indian Reserve, at Caughnawaga. The triangle marked T. on plan D, has been damaged by the cut to the extent of 50 per cent. of its value.

*Donald Barton*, engineer, practising for about 21 years, of which 16 years in Canada. In Montreal the first 7 years. From 1902 to 1909 was general manager of the Canadian Electric Light Co. at Chaudiere, which expended between \$400,000 to \$500,000 for the power house. In 1909 the Canadian Electric Light Co. was bought by the Quebec Railway Light and Power Co., with which company he has since been in the capacity of consulting electrical engineer—in which capacity he is also acting with the Stadacona Hydraulic Co. He has had experience in buying property for various works from time to time, and looks upon the property in question as being bound to be a junction for several important railways coming into Quebec, and that it is bound to go ahead with a rapidity equal to any suburb of Quebec. He considers further it is well situated for factory purposes. The expansion of Charny is also bound to be towards the McNaughton property. He has invested in Charny. Between Charny and the McNaughton property there are 2 farms of about 2 arpents in width and there are houses opposite the McNaughton property, on the highway. The pole line of the Canadian Electric Co. passes well through the middle of the McNaughton property, giving special facilities for industrial purposes and electricity could be had in reasonable quantity. Values Blocks A, B and C at 3 cents a foot. The Breakey property is about one-third of a mile from the property in question. The cut of

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200 feet wide and 30 feet deep made by the Transcontinental is most unfortunate for the neighbouring property. The development of the property has been delayed by the fall of the Quebec bridge. The Levis Electric Railway has been extended this summer within a mile in that direction, up to the mouth of the Chaudiere River, along the St. Lawrence. However, the Quebec bridge is what gives value to this property and its surroundings, and without the bridge it has a value as a distributing centre for all the railways coming there. A disturbing element which kept matters in abeyance was the cut of the Transcontinental, as people did not quite know what was to be done. Block A has been damaged by the high railway and embankment adjoining it.

*Stuart Oliver*, an engineer and land surveyor, has measured the triangle marked T on plan D, and says it has an area of 6.27 acres.

*Pierre Fontaine*, Mayor of Charny for the last 4 years. Charny has been established since 1902 or 1903. In 1903 there were from 45 to 50 families, and to-day there are 250 to 255 families. They have an aqueduct, electric light for their houses, and a bank. The population has increased from 1907 up to to-day, but could not say how much. The McNaughton property is about 9 to 10 acres from the end of the Charny village.

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Here follows a summary of the Crown's evidence composed of the following witnesses, viz.:

Charles J. Laberge, Arthur Cantin, Altheod Tremblay, Edmond Giroux, Romeo Beaudet and Jean T. Lemieux.

*Charles J. Laberge* was, down to last May, for 5 years in the employ of the Commissioners of the

Transcontinental Railway for the valuation and purchase of lands in that neighbourhood, and is now bookkeeper at Quebec. He was the land-purchasing agent of the Transcontinental Railway. There is an embankment of 40 to 50 feet adjoining Block A. He values Blocks A, B and C at \$100 an acre as farming land. Farms in the neighbourhood of B and C are worth, excepting the buildings, about \$50 an acre. Part of A is rocky and hilly for about three acres near the Chaudiere River.

*Arthur Cantin*, farmer, residing 4 acres from the McNaughton property, values Block B and C at \$200 an acre; but taking the whole farm it would be worth \$40 an acre. Block A is of a better soil, and taking the whole farm it would be worth \$50 an acre. The Transcontinental took 2 1-3 acres of his farm and paid him \$1,700, and he contends \$1,000 for damages. His valuation is as farming land, and he does not see any other (point de vue) basis upon which to establish other valuation. The \$1,000 he received for damages upon his property were made up of \$500 for renouncing to a crossing, and \$500 for being deprived of a water-course, and there was also \$136 for interest. His property is to the east of the McNaughton property, and he was settled with about 4 or 5 years ago.

*Altheod Tremblay*, surveyor, is in the employ of the Transcontinental, and from 1906 to 1912 was assistant land purchasing agent for the right of way. Block A he values at \$50 an acre, and it had been valued at \$200 an acre by his predecessor; this land is fit for farming and pasturage; and part of it is rocky, and does not know of any demand for this land for building lots. The land could not be used as a railway yard on account of the difference in level.

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From the southern extremity to Block A there is a difference in level of 50 to 60 feet, and the Transcontinental has purchased at St. Jean Chrysostome, 4 miles away, land for a railway yard. Values Blocks B and C at \$50 an acre. No damage with respect to Block A as the whole is taken. No damage to Block C. There might be some damage to Block B, because it forms a triangle, a point, between the I. C. R. and the Transcontinental. He does not think the damages would be very high. His valuation is on a farming basis. The embankment affected Block A 50 per cent. of its value. The cut on Block B is an inconvenience.

*Edmond Giroux*, insurance agent, has experience in the valuation of property both as arbitrator and as an expert witness, but is more familiar with the value of land on the north (Quebec) than on the south (Levis side). Values Block A in 1907 at \$40 to \$50 per acre for agricultural purposes; B at \$200 per acre, including damages; and C at \$100.

*N. Romeo Beaudet*, a civil engineer in the employ of the Transcontinental, has been in charge of the construction of the Transcontinental in that neighbourhood, and says there has been no increase in values of property since 1907. From Charny church to the McNaughton property there is about half a mile. The McNaughton property could not be used as a railway yard, consistent with expense, as there is a difference in level of 110 to 120 feet between the jib lot and the southern part; and between the southern end of Block A and the southern part of the property, the difference is between 90 to 100 feet. The Transcontinental has already purchased land for a railway yard, 4 miles away from the property.

*Jean T. Lemieux*, secretary-treasurer of St. Romuald since 1887.. The McNaughton property was assessed in 1905, 1908 and 1911 at \$4,000. For municipal purposes it is assessed at \$20 an acre as farming lands, and presently he does not see any other use it could be put to.

This concludes the evidence.

This property must be assessed as at the date of the expropriation, at its market value in respect to the best uses to which it can be put, taking in consideration any prospective capabilities or value it may obtain within a reasonably near future. At the very threshold the question to be determined is to what class the defendant's property belongs. Is it in the farming class, or is it in the industrial and building lot class? All of the witnesses heard on behalf of the Crown place it in the farming class, while the witnesses for the proprietors place it in the industrial and building-lot class. It then becomes the task of the court to determine where the weight of the evidence preponderates. Now, who are the witnesses heard on behalf of the Crown testifying as to value? Tremblay is the assistant land purchasing agent for the Transcontinental; and Laberge, up to May last, was the land purchasing agent of that railway. Without attacking their character and casting any doubt upon their honesty, they are and must be as in all matters of opinion evidence, influenced by their desire to do the best they can for their employer, and all of this goes to the weight of the evidence when one comes to consider it. The next witness is a farmer, Cantin, who has been handsomely settled with for 2.1-3 acres at \$1,700 including damages—and as a farmer he values

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the land as farming land—he says he does not know any other value. That leaves the Crown with one other witness, Giroux, who values the land at \$40, \$100, and \$200, for Blocks A, C and B respectively, but who honestly says he is not as well versed in the value of property on this side of the river as on the Quebec side.

If this land should properly be assessed in the class of farming land, the figures of \$50 to \$100 and the \$200 inclusive of damages would perhaps be right. But the Crown by its pleadings removes to a certain extent the difficulty and helps in arriving at the conclusion that by tendering \$250 an acre, it recognizes the land has a higher value than that of farming property.

The evidence on behalf of the proprietors places the property in the industrial and building-lot class, and the valuation ranges from \$700 to \$1,400 an acre. While this Court is unable to adopt as a whole this valuation, it is ready to accept the basic principle of valuation underlying the method of valuing, without adopting, however, the conclusion upon the question of quantum. The conflict and difference as between the evidence for the Crown and that of the proprietors is great and material. What can help us out of the difficulty, if not sales made in the neighbourhood? And here again, as in the previous case between the same parties, the Court will (for the reason mentioned in the previous case, namely, that a lower price is usually paid for a large area proportionately than for a small one) consider the Breakey sale—a property about one-third of a mile from the lands in question—at \$600 an acre. This Court will adopt as a *datum* the valuation of \$550 an acre for Block A. The judgment in the first ex-

propriation covered all damages resulting from that expropriation. Then at the date of the present expropriation Block A had been greatly damaged by this high embankment of 40 to 60 feet in height, and accepting for the ratio of damages by the embankment the figures of most of the witnesses, namely, by half, one must arrive at a valuation of \$275 an acre, and that would be a fair compensation for Block A, taking that valuation as an average price for the whole, although a large portion has a lesser valuation on account of its rocky formation. Passing to Blocks B and C there can be no doubt that the neighbourhood of a cut of 200 feet wide by 30 feet deep, is an element of a very serious damage, and that also the triangle T of 6.27 acres, has been very materially damaged; and for these two pieces B and C the Court is of opinion that the full sum of \$550, inclusive of all damages to the triangle, to the 600 feet mentioned by witness St. George, of the land on the north of the cut, and generally for all damages whatsoever, would be a fair and liberal compensation. The question of having a crossing between C and T, or between B and T, is practically out of the question, and witness Cantin was allowed as much as \$500 for the deprivation of a crossing.

This land has certainly in a general manner derived a great benefit from the Quebec bridge, from its neighbourhood to Charny, and from the further fact that the I. C. R., the G. T. R., the Transcontinental, and a number of minor lines of railways which will in the near future converge in that locality and make it a railway junction of some importance. All of this, coupled with other minor considerations, must manifestly place this property on the market at a higher value than that of land for farming pur-

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poses, and it must necessarily be considered as belonging to the industrial and building class.

At the figures above mentioned the following sums will be arrived at, viz.:

Block A of 32.54 acres at \$275 .....	\$ 8,948.50
Block B of 14.80 acres at \$550 .....	8,140.00
Block C of 2.32 acres at \$550 .....	1,276.00

Making the total sum of .....\$18,364.50  
 for the 49.66 acres expropriated.

Therefore there will be judgment as follows, viz.:

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

2nd. The defendant company is entitled to recover from His Majesty the King—for the lands taken and for all damages whatsoever resulting from the expropriation—the said sum of \$18,364.50, with interest thereon, at the rate of 5 per centum per annum, on the sum of \$8,948.50 from November 30th, 1907, on the sum of \$8,140 from May 13th, 1907, and on the sum of \$1,276 from June 4th, 1909, to the date hereof—upon giving to the Crown a good and satisfactory title and a release from all hypothecs or encumbrances whatsoever upon the said property.

3rd. The defendant is also entitled to costs of the action, after taxation thereof.

*Judgment accordingly.*

Solicitor for plaintiff: *Aimé Dion.*

Solicitors for defendant: *Belleau, Belleau & Co.*