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July 7.

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

PLAINTIFF,

AND

THE QUEBEC GAS COMPANY, A BODY CORPORATE,

AND

THE CITY OF QUEBEC,

DEFENDANTS,

AND

THE ROYAL TRUST COMPANY, A BODY CORPORATE,

AND

THE QUEBEC RAILWAY, LIGHT, HEAT & POWER COMPANY, A BODY CORPORATE,

ADDED DEFENDANTS.

Expropriation—Conversion of rights — Compensation — Companies—Action—Parties—Market value—Special adaptability—Railways.

By virtue of sec. 8 of the *Exchequer Court Act*, the deposit of the plan and description of the land expropriated has the effect of vesting the property in the Crown, and from such time, under sec. 28 of the Act, the compensation money stands in lieu of the land, and any claim to the land is converted into a claim for the compensation money.

2. A corporation holding the shares of a subsidiary company has no *locus standi* to prosecute a claim for compensation on behalf of the latter; the action of the subsidiary company must be brought in its own corporate name.

3. The special adaptability of land for railway purposes is but an element of the market value of the land. In assessing compensation for the taking of such land regard must be had of its value to the owner, not the value to the taker. The doctrine of reimbursement does not apply to the taking of lands not used as a going manufacturing concern. The best test of the market value is what other properties in the neighbourhood have brought when acquired for similar purposes.

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

Tried before the Honourable Mr. Justice Audette, at Quebec, May 11, 12, 14, 15, 16, 18, 1917.

G. F. Gibsone, K.C., *Arthur Holden,* K.C., and *J. P. Gravel,* for Crown.

E. A. D. Morgan, K.C., for Quebec Gas. Co.

A. Taschereau, K.C., for Royal Trust Co.

L. G. Belley, for Quebec Ry., L., H. & Power Co.

AUDETTE, J. (July 7, 1917) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby certain lands, belonging to the defendants, were taken and expropriated for the purposes of the National Transcontinental Railway, by depositing on April 24th, 1913, and on February 24th, 1915, plans and descriptions of the same with the Registrar of Deeds at the City of Quebec.

These lands are situate in St. Peter's Ward, in the City of Quebec, and since the expropriation form part of the new C. P. R. Union Station, at the Palais.

The Crown by the information offers $144,400 and interest. The Quebec Gas Company by its statement in defence claims the sum of $822,704, and the Quebec Railway, Light, Heat and Power Company claims the sum of $860,176.90, inclusive of 10 per cent. for coercion.

It is admitted by all parties that the total area of land taken is of 62,558 1-3 square feet—that is:

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	Square ft.
Lot 1937 contains	16,098 1-3
And the whole Lot 1937 A, contains.....	46,460
Making a total of.....	62,558 1-3

It is further admitted by all parties that the value of the buildings upon the lands in question, at the time of the expropriation, was of $32,000, therefore the evidence in respect of valuation will be limited to the land only,—the value of the buildings having thus been ascertained by consent.

Mr. Morgan, K.C., counsel at bar for the Quebec Gas Company, at the opening of the trial, filed the following declaration of admission, which reads as follows, to wit:

"The defendant, the Quebec Gas Company, by "way of amendment to the statement of defence "put in by them, declare that they now admit that "the filing of the plan and the taking of the lands "described in the information was actually made "and done on behalf of His Majesty the King, "and by reason thereof said lands are now, and "have been since the filing of the said plan, vested "in His Majesty the King."

This declaration or admission speaks for itself, and removes one of the traversed allegations of the information.

It was also admitted, in the course of the trial, that the indications on plan 3-a, made with arrows by Mr. Trembly, are correctly marked in accordance with the deeds, including the yellow portion; which is an exchange between the Harbour Commissioners and the Transcontinental. The deeds indicated on the plan were executed after the plans for expropriation for such land had been deposited.

In order to follow the trend and the development of the different phases of this case, it is thought advisable to mention here that on January 21st, 1915, Mr. Morgan, K.C., moved the court for an order directing that the question of title or ownership of the property in question be disposed of before going into the question of compensation, alleging in his motion paper that his clients claimed the sole ownership of the land in question. The application was then enlarged *sine die.*

Then on February 9th, 1917, Mr. Morgan, K.C., alleging his application of January 21st, 1915, just referred to, and also a resolution of the City of Quebec (at that time the only other defendant), by its Council, at a meeting of June 29th, 1916, setting out that the city had no interest in the properties herein, prayed for an order, in view of the said resolution, declaring that the Quebec Gas Company was the sole and only defendant in this case, and that it be declared that the other defendant (the City of Quebec) is no longer a defendant. * * *

Mr. Chapleau, K.C., of counsel for the City of Quebec, then showed cause and declared he withdrew from the case.

Under these circumstances an order was made *donnant acte* of such disclaimer or withdrawal from the case by the City of Quebec, with, however, no further pronouncement for the time being. Subsequently thereto, two other parties were added defendants to this suit, namely, The Royal Trust Company, which company did not file any written plea, but by its counsel, Alexandre Taschereau, K.C., at the opening of the trial, declared *s'en rapporter a justice,* that is, submitted itself to the judgment of the court, and The Quebec Railway, Light, Heat and

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Power Company, which filed of record a set of pleadings.

In the result there is now on the record a claim by the Quebec Gas Company for the land taken herein, and there is also a claim by the Quebec Railway, Light, Heat and Power Company (hereinafter called the Power Company) in respect of the land itself, and also in respect of the Montmorency and Charlevoix Railway.

Before entering into the consideration of the compensation to be paid under the present expropriation, it becomes necessary *in limine* to establish the actual rights of both the Quebec Gas Company and the Power Company, respectively.

THE QUEBEC POWER COMPANY.

The manager of the Quebec Power Company, heard as a witness, testified that he was the manager of that company, which might be called the holding company, or the merger, as it is popularly called; that he was also manager of all the subsidiary branches or companies under the merger, that is to say: the Quebec Gas Company, the Frontenac Gas Company, the Quebec Jacques Cartier Electric Company, the Quebec Railway, Light and Power Company, the Quebec County Railway, the Canadian Electric Light Company, the Lotbiniere & Megantic Railway Company, and the Quebec and Saguenay Railway. He did not mention or include among these subsidiaries the company known as the Quebec, Montmorency & Charlevoix Railway, but it was always taken for granted at trial that it was one of the companies of which the Power Company held the stock.

The merger deed so much spoken about and relied upon at trial has not been filed of record in this case, although asked for by the tribunal. We are told by the manager that the merger took place in the early part of 1910, but it might be inferred from the trust deed to the Montreal Trust Company, bearing date December 15th, 1909, that it must have been in existence in 1909. That fact, however, has no bearing upon the case.

Now, it is important to bear in mind, that on April 24th, 1913, the date of the expropriation, both the City of Quebec and the Quebec Gas Company appeared, on the Registry, to be the only parties having any real registered rights upon this property.

As the partial result of an agreement entered into on September 11th, 1916 (long after the expropriation) between the City of Quebec and the Quebec Power Company, it was among other things covenanted and agreed as follows, to wit:

"Et en considération de tout ce que dessus, la "dite cité (City of Quebec) cede et abandonne a "la dite Compagnie (the Quebec Railway, Light, "Heat & Power Company) toutes les prétentions "et tous les droits de propriété que la dite cité "peut avoir sur le terrain précédemment occupé "par la 'Quebec Gas Works' et connu sous le "numéro (1937 A) dix neuf cent trente sept A du "cadastre officiel pour le Quartier St. Pierre de la "Cité de Québec."

Under the provisions of sec. 8 of the *Expropriation Act*, by the deposit of the plan and description of this property on April 24th, 1913, such property became vested in the Crown; and under sec. 22 of the same Act, a like provision is made, and it is fur-

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ther thereby enacted that from such time the compensation money shall stand in the stead of the land, and that any claim thereto is converted into a claim to such compensation money. *The Queen v. McCurdy;*[1] *Partridge v. Great Western Railway Co.;*[2] *Dixon v. Baltimore & Potomac R. Co.;*[3] *Lamontagne v. The King;*[4] *Dawson v. G. N. & C. Railway;*[5] *Mercer v. Liverpool, St. Helen's & South Lancashire Ry. Co.;*[6] and *Halsbury.*[7]

On September 11th, 1916, the lands in question had, since April 24th, 1913, the date of the expropriation, become under the statute, the property of the Crown, and all mutations of this property subsequent to the expropriation are null and void on their face,—the only effect such mutations may have is between the parties to the deed itself, which at its best can be construed as a transfer to any right "to the said compensation money" which the City of Quebec may have had, and I hereby so find.

Then follows in this chain of title the deed of May 12th, 1917,—a deed passed a long time after the expropriation and even pending the instruction of the trial,—between the Quebec Gas Company and the Quebec Railway, Light, Heat & Power Company, Limited,—to confirm the statement therein mentioned, to the effect that the Power Company had, before January 1st, 1912, "already acquired and "taken possession of a certain part or parcel of the

[1] 2 Can. Ex. 311.
[2] 8 U. C. C. P. 97.
[3] 1 Mackey 78.
[4] 16 Can. Ex. 203.
[5] [1905] 1 K. B. 260, 273.
[6] [1904] A. C. 461.
[7] Vol. 6, p. 33.

"land in question with the approval and consent of "the Quebec Gas Company, and enjoyed the same "as its own and absolute property, and has always "been considered, even by the Quebec Gas Co., as "sole and absolute owner of the same. Further- "more, that no deed or instrument in writing was "executed at the time between the said parties to "state and establish the same, and that it is expe- "dient to then execute the deed."

All of what has just been said in respect of the deed of September 11th, 1916, may equally be said with respect to this deed of May 12th, 1917, and that in the result it is a transfer by the Quebec Gas Company to the Power Company of its rights to "the compensation money" herein, coming also within the ambit of sec. 22 of the *Expropriation Act.*

However, the contention of the Power Company goes beyond that. While it claims to have been the owner of the land in question before the expropriation, as the holding company, I should say they hold and own the shares of the Quebec Gas Company, and they ask that the compensation to be paid should be ascertained as if the property did belong to them, and as the Power Company is also the holding or parent company of the Montmorency & Charlevoix Railway, also holding and owning the shares of the latter, they conclude similarly.

The Power Company is the owner of the shares of the Quebec Gas Company, and of the Montmorency & Charlevoix Railway Company; the Power Company represents and is effectively nothing but the shareholders of these two companies.

Dealing first with that part of the claim made by the Power Company, as owner of the lands in question and described in this deed of May 12th, 1917,

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executed during the trial, I must confess I cannot accept, under the circumstances, the statement made in that deed, to the effect that the Quebec Gas Company had, as far back as January, 1912 (a carefully selected date, which would take the transaction prior to the expropriation), sold their property to the Power Company, in view of the fact that the latter is only the holding or parent company. Moreover, the inherent rights of the City of Quebec in this property had not passed to the Power Company until September 11th, 1916, also a long time after the expropriation. It is obvious and conclusive that this statement is but the result of a misconception of the respective rights between a holding or parent company and a subsidiary company, and the seemly result of an afterthought which originated only at the trial. Therefore, it must be again found, taking into consideration all these surrounding circumstances, and the allegations in its pleadings, that this deed can but amount to an agreement between the Power Company and the Gas Company, whereby the Power Company are made entitled to receive the compensation money for the lands expropriated. In other words, it is a transfer by the Quebec Gas Company of its rights, not to the land, but to the compensation money, as the transfer is made after the expropriation,—the whole pursuant to the provisions of sec. 22 of the *Expropriation Act*.

However, the Power Company makes a claim which, if it were allowed, would let in a very important element under the head of injurious affection to the Montmorency & Charlevoix Ry. Co., one of its subsidiary companies—the whole as more particularly set out in paragraph 13 of the Power Com-

pany's statement in defence, which reads as follows, to wit:

"13. L'expropriation en cette cause et la prise "de possession de sa Majesté a occasionné à la dé- "fenderesse des dommages considérables dans l'ex- "ploitation de son chemin de fer Montmorency et "Charlevoix, en le privant des immeubles expro- "priés, dont elle avait absolument besoin pour son "terminal a Quebec."

This is a claim made by the Power Company for damages alleged to be suffered by the Montmorency & Charlevoix Railway, a subsidiary company, for which the Power Company is holding the shares.

What is therefore the position of the Power Company in its relation to the Montmorency & Charlevoix Railway Company? The relation is nothing more than that of a shareholder in a corporate body is to a company. The Power Company holds the shares of that company, and is in the same position as a shareholder of the Montmorency & Charlevoix Railway Company, and as such can no more than an ordinary shareholder take an action for that company or defend an action against it. Any action on behalf of the Montmorency & Charlevoix Railway Company must be taken in its corporate name and not by one or all of its shareholders individually. Therefore, that part of the claim set up by the Power Company for any damages which might result to the Montmorency & Charlevoix Railway Company, not having been taken by that company in its corporate name, must obviously be dismissed.

Although the Montmorency & Charlevoix Railway Company is not a party to this suit and cannot be bound by this judgment, yet, as the voluminous evidence adduced in respect of the rights of that com-

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pany does not disclose any proprietary rights in the land in question, it was thought advisable under the peculiar circumstances of the case, to offer a few observations in this respect for the sake of argument only, which really become exclusively academic, since the Montmorency & Charlevoix Railway Company did not set up a claim in its corporate name. For instance, what is the position of that company? If the property expropriated herein did form part of the terminal of the Montmorency & Charlevoix Railway Company, it has already passed to the Crown under the provisions of 6-7 Geo. V., ch. 22, the Order-in-Council of August 4th, 1916, and the agreement of July 25th, 1916, made under the provisions of the said Act. This is too obvious. A summary perusal of the schedule to the Act and to the deed in question, and Schedule "C" thereof, will establish that point beyond controversy. Both the Quebec & Saguenay Railway, and the Quebec, Montmorency & Charlevoix Railway passed to the Crown under these instruments, "inclusive of its terminals in the City of Quebec."

If, on the other hand, as the case is, notwithstanding contention to the contrary, the property in question did not and does not form part of the Terminal,—and even if part of it was used for the company's *stone business*, with or without the assent, consent or tolerance of the Quebec Gas Company, or those controlling that company,—it does not make the land part of the Terminal.[1] It only shows, as will be hereafter referred to, that this property was a discarded gas property, where gas had not been manufactured for several years (since 1910), and that the property was not a gas proposi-

[1] See Cripps on Compensation, 5th ed., p. 148.

tion or a going concern as such; but a property practically idle and which on the market would sooner or later be taken by some of the railway companies that had already property in the neighbourhood.

It may also be said casually that these damages, in the nature of injurious affection to the Montmorency & Charlevoix Railway, and the Quebec & Saguenay Railway, are grossly exaggerated by some of the witnesses, when it is actually established that only a very small portion of the land expropriated of the Quebec Gas Co., property was used for this stone business, and that the property is entirely separate and distinct from the railway company—a street lying between both properties. Moreover, it is difficult to conceive that the alleged congestion at the Quebec Terminal did actually exist, in view of the fact which glaringly struck me on the visit to the premises during the trial at the request and in the company of counsel for all parties, that the company has almost right alongside of its station, as shown on the plan, its workshops. If there were actual congestion in the yard, at the Terminal, would not a company conducted as it is on a sound business basis, have transferred these shops to their Limoulou yard to give them more space at the Terminus? But it is unnecessary to elaborate upon this point, since I have found, for the reasons above mentioned, that the Power Company has no *locus standi* when claiming damage to the Terminal of the Quebec, Montmorency & Charlevoix Railway. There can be no compensation for injurious affection, if no legal right is interfered with.[1]

[1] Cripps on Compensation, 5th ed. 140.

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Proceeding now to the examination of the evidence and the ascertainment of the compensation to be paid for the land so taken, it will be seen that quite a few engineers were examined on behalf of the defendants, and their evidence tends to show that the Quebec Gas Company's land could be added with advantage to the railway companies' property already owning land in the neighbourhood. Two of these engineers are of opinion that the Quebec Gas Company's property would be more valuable to the Canadian Pacific Railway Company, or the National Transcontinental, than to the Quebec Railway, because it is adjoining the C. P. R., and that for the Quebec Railway to use it effectively and economically it would be necessary to acquire some city property and some property from the Quebec Harbour Commissioners.

In view of what has already been said it becomes unnecessary to go into this class of evidence, more than repeating here what I have already said, and that is that this property decidedly falls within the class of property which sooner or later would be taken by some of the railway companies that have already property in this neighbourhood.

On behalf of the defendants the following witnesses were heard upon *the question of value*: Henry G. Matthews, George W. Parent, Fitzjames E. Browne, George Beausoleil and Lucien Bernier.

Henry G. Matthews, the general manager, testified that if an offer of $50 per square foot had been made on behalf of the holding company he would have advised not to accept it. But if $75 a square foot had been offered he would have advised to accept it,—that amount representing over $4,000,000,—which

would have "allowed us to sell the railway for scrap and the Montmorency Railway go out of business."

Yes, this property of 62,558 1-3 feet at $75 a square foot would represent $4,681,875. Such a valuation calls for no comment, as it is of no help to a tribunal desirous to do justice in a conscientious manner.

George W. Parent, a resident of Montreal, who, however, in 1906, 1907 and 1908, made some subdivisions in Quebec, arrives at an average price of $14 a foot for the land in question. To establish this value he reasons in the following manner. He considers that the Canadian Pacific Railway and the Quebec Railway are both cramped for space, and that therefore the situation is different from that of an expropriation visited upon a private individual who could move his establishment to another place. He takes it that the only available block to replace the property expropriated is between Place d'Orleans and St. Paul Street, containing about the same area; and he concludes that the only price he could place upon the land taken would be what it would cost to replace it,—the price asked on the Ramsay-Henderson block,—that is $8 to $20—or, as he says, an average of about $14. He further adds that from a real estate standpoint, the block between Place d'Orleans and St. Paul Street is perhaps worth more, but the advantage of the Quebec Gas Company being near the water is a set-off.

Fitzjames E. Browne, a well-known real estate broker, of Montreal, prefaces his statement as to his valuation by stating he bases such valuation on common sense and on *what has been paid for extension of railroads in Montreal,* and concludes by saying the only way to arrive at the value of the property in question is what will have to be paid for adjoin-

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ing property to replace it. The sum of $20 a foot is asked for the corner of Henderson Street, and other owners ask $14. He fixes the value of the property expropriated at the average price of $15 a square foot. And on cross-examination he further states the prices asked on Henderson-Ramsay Street are of and in 1917, and he did not know what they asked in 1913, the year of the expropriation.

George Beausoleil, who has had experience as valuator both in Montreal and New York, states he visited the Quebec Gas property recently and seeing the advantage that the Quebec Railway has to be in a position to replace in the proximity the land expropriated, and that for so doing the company would have to pay $15,—the claimants would be entitled to recover $15,—*C'est une valeur de remplacement.* It is a reinstatement value, he says. He further adds, that out of two properties available to replace the land expropriated there is also what is known as the Clint and Young property, for which the same price would have to be paid as for the Henderson-Ramsay block.

Lucien Bernier, a resident of Montreal, who had known Quebec for 54 years, and resided near the Quebec Gas property for 20 years, says he is a real estate broker, with, however, a more extensive and special experience in respect of farms (*des terres*). He says the property in question is indispensable for the C. P. R., or the Transcontinental. The sum of $14 or $15 a square foot is asked on Henderson and Ramsay Streets, therefore he would value the land taken at $15, because it is a railway property.

This witness, it follows, seems to arrive at his valuation, both upon the reinstatement basis and upon seeking the value to the taker and not to the

owner. Both elements are erroneous in the present case.

On behalf of the Crown the following witnesses were heard on the question of value: Joseph G. Couture, Edmond Giroux, Joseph Samson, Gustave Proteau and Eugene Lamontagne.

Joseph G. Couture, Notary, of Quebec, with quite an experience to his credit in land transactions, says the property expropriated could be used for garage, warehouse, industrial and railway purposes. He bases his valuation upon prices paid for property at Quebec, in the neighbourhood of the land taken, and cites, among others, the following sales. In St. Peter's Ward, City of Quebec—as will be more readily understood by reference to Plan, Exhibit 3A—he relies upon:

Exhibit 4—Sale of the Dombrowski property, including wharves and buildings. Lots Nos. 2009 and 2010, sold in 1914 at $1.23 a square foot.

Exhibit 5—Same lot 2009 sold in 1915 to Harris Abattoir at $1.00 a foot.

Exhibit 6—Racy property, lot 2008, sold in 1910 at $1.95½ a square foot.

Exhibit 7—Sale of Amyot to Delisle, in 1909, of lots 1993, 1994, with extensive buildings, at $2.65 a square foot.

Exhibit 8—Sale of Piddington to Gorrie, in 1911, lot 2005, beach lot, at 65c a square foot.

Exhibit 9—Sale of Ritchie to Drouin, in 1911, lots 2008-2, and 2008A, at $1.00 a square foot.

Exhibit 10—Dupuis to Archer, in 1912, lot No. 2004, at $1.06.

Exhibit 11—Lamontagne to Mackenzie, Mann & Co., on June 5th, 1909, lot 2001, at $1.60. This is a sale repeatedly mentioned and often referred to as

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the Archer property, or the sale from Archer to the Canadian Northern. This transaction is somewhat apposite to the purchase in question herein, in that it was bought by a railway at the extreme north-eastern end of its yard, to enlarge it. The property was partly covered with wharves, with access on the one side to the Louise Basin, and on the other to St. Andrew Street.

Exhibit 12—Sale of Quebec Seminary to Lake St. John Railway, in 1903, of lot 2006, a beach lot, at 40 cents.

Exhibit 13—Sale between Renaud and Lemoine, in 1906, of lot 2011b, with buildings, at $1.45.

Exhibit 14—Sale by Renaud to the Canadian Northern Railway Co., in 1907, of lots 2011e and 2012a, no buildings, at $1.90 a square foot.

Coming now to St. Roch Ward.

Exhibit 15—Sale of Moraud to the Quebec Progressive Realty Co., in 1912, of lot 886, adjoining the C.P.R. yard, at $1.42, i.e., $60,192, with buildings of a value of at least $15,000.

Exhibit 16—Sale, Cie. Carrier to Moraud, in 1911, of same property for $60,000.

Exhibit 17—Sale, Archer to Leclerc, in 1909, of lot 886, at about $1.06 a square foot.

Exhibit 18—Sale, Walcot to McKay, in 1913, of lot No. 733a, at $1.83 per square foot, with buildings.

Exhibit 19—Sale of Delisle to the Quebec & Lake St. John Railway Co., in 1906, of lot 557-I., etc., at Limoulou, at 4½c a square foot. The witness also relied upon some other sales, and at this stage of the case counsel for the Crown put in the following exhibits:

Exhibit 21—Judgment *re The King v. Peters*,[1] July

[1] 32 D.L.R. 692, 15 Can. Ex. 462.

24th, 1914, respecting lots 576a and 577, at $2.08.

Exhibit 22—Dorchester Electric Co. to Transcontinental, lot 578, at $2.08 per square foot.

Exhibit 23—Stadacona Land Co. to Transcontinental, part of lot 579, at $1.87 per square foot.

Exhibit 24—Stadacona Land Co. to Transcontinental, part of lot 579, at $1.87 per square foot.

Exhibit 25—Sale of Martel to Drouin, lot 719, in 1911, of 62,380 square feet at $60,000.

Exhibit 26—Sale of Dunn to Drouin, in 1906, lot 720, of 16,800 feet for $18,000.

Then witness Couture concludes in fixing upon the land taken a value of $2.25 a square foot.

Edmond Giroux, basing his valuation upon sales in the neighbourhood, values the land taken, with the buildings thereon erected (which have been by consent admitted at the value of $32,000) at $2.60 a square foot. However, he values the land at $2.00 and the buildings at $42,600.50—which would bring the balance of the land slightly below $2.00 a foot.

In the course of a valuation made by this witness of the value of the C.P.R. lands in that neighbourhood, with the view of establishing a value of that property for a Union Station, he placed a value of $3 a foot on St. Paul Street, for a depth of 125 to 150 feet, at 50c a foot, from the Harbour Commissioners' line to the south of the projected street on plan 3a, and the space between at $1.50 a square foot.

He says he could have bought Madame Fortin's property on the 15th of February, 1913, between Henderson and Ramsay Streets, lot 1946, at $5.13 a square foot, including buildings, leaving the land at $3.37. Lot 1948 was sold, with buildings, at between $6 and $7 a square foot.

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Jos. Samson assumed, in arriving at his valuation, that the Quebec Railway Co. were the owners of the property taken, and that the Gas Company was not a going concern, and basing his valuation upon the figures paid on sales in the neighbourhood, valued the property taken at $2.50 a foot. In this valuation he allowed 50c a foot for damages, taking into consideration the Electric Company needed it.

Gustave Proteau bases his valuation upon sales in the neighbourhood, taking also into consideration the fact that the gas property is detached from the yard of the Quebec Railway. He values the land taken at between $2.25 and $2.50 a square foot.

Eugene Lamontagne, taking into consideration the prices paid for sales in the neighbourhood, values the land taken at $2.25 to $2.50. He knows the property for a long while, and says that before he last visited the property, with witness Couture, he thought it was worth from $2.50 to $3; but, when he went there, he came to the conclusion it was only worth $2.50.

This concludes the evidence upon the question of value.

In view of the conclusion arrived at on the question of law above referred to, it is unnecessary to go into any other part of the evidence.

Now, this property must be valued and assessed, as at the date of the expropriation, at its *market value* in respect of the best uses to which it can be put, taking into consideration any prospective capabilities, potentialities or value it may obtain within a reasonably near future.

Market value is defined in the case of *The King v. Macpherson*[1] as: "The value that a vendor not

[1] 15 Can. Ex. 215 at 216.

"compelled to sell, not selling under pressure, but "desirous of selling, is to get from a purchaser not "bound to buy, but willing to buy."

Most of the engineering evidence, if I may call it so, adduced on behalf of the claimants, is to show the Quebec Gas property is an advantageous piece of land for a railway operating as the Montmorency & Charlevoix and the Saguenay companies, and that from being surrounded by several railways, this property has acquired special adaptability for railway purposes. It was obviously the ultimate fate of the property to be acquired for railway purposes. It is perhaps of more value to the C. P. R., whose yard and station are immediately adjoining it, than it would be to the Quebec Railway (or the Montmorency & Charlevoix Ry., etc.), from which it is separated by a street, and which would have had to acquire that triangular piece of property to the north belonging to the Quebec Harbour Commission to be in a position to work and use this property in a business-like and economic manner, and that would tend to make it rather expensive for them. And the Montmorency & Charlevoix Railway and the Quebec & Saguenay Railway have almost already passed to the Crown under the statute above mentioned.

There may, indeed, be here competition in the prospective purchasers of this property by railway companies owning property in this neighbourhood; but in no sense should the compensation to be awarded be more than the price that legitimate competition by purchasers would reasonably force it up to. And when it is claimed that the property has a high value on account of its special adaptability for railway purposes, it is not claimed that such special purposes are limited to the C. P. R., or the Transconti-

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nental; but that the situation of the land in the neighbourhood of railways will bring these railway companies as prospective competitive purchasers, and in such a case it becomes an element in the general value.

However, when the owner of such property is given more than the price or the value of his property to him for his own purposes and all that anyone else would offer him, except the taker, what else can he ask, if not part of the value of that land to the taker,—and in no case should the value be the value to the buyer, but the value to the seller. *Fraser v. City of Fraserville,*[1] and the *Sidney* case.[2]

In the present case the land expropriated was of very little value to the Quebec Gas Co., the company having for a number of years discontinued manufacturing gas there—it was a discarded gas proposition, and the property would be of much more value for railway purposes. Therefore, the Crown has offered more than the land is worth to the owners for their own purposes, assuming the full title is in the Gas Company. Moreover, the owners are offered the market value of this land in which its special adaptability for railway purposes is an element. This special adaptability does not, however, reside in its conformation or topography, as in the *Lucas* case, but from being in the neighbourhood of several railways. In the amount offered by the Crown is merged both the intrinsic value and the market value of the land, including the special adaptability for railway purposes due to prospective competitive purchasers; as special adaptability is nothing more than an element of the market value, and forms part

[1] [1917] A.C. 187, 34 D.L.R. 211.
[2] [1914] 3 K. B. 629.

of the same. Indeed, this element of potentiality, or prospective capability, call it what you may, is after all nothing but an element in the market value itself. *Sidney v. North E. Railway;*[1] *Cedar Rapids* case.[2]

In the *Sidney* case will be found a very instructive discussion on the question of special adaptability, in which Rowlatt, J., says:

"Now, if and so long as there are several compe-
"titors including the actual taker, who may be re-
"garded as possibly in the market for purposes such
"as those of the scheme, the possibility of their of-
"fering for the land is an element of value in no
"respect differing from that afforded by the possi-
"bility of offers for it for other purposes. As such it
"is admissible as truly market value to the owner
"and not merely value to the taker. But when the
"price is reached at which all other competition must
"be taken to fail to what can any further value be
"attributed? The point has been reached when the
"owner is offered more than the land is worth to
"him for his own purposes and all that anyone else
"would offer him except one person, the promoter,
"who is now, though he was not before, freed from
"competition. Apart from compulsory powers the
"owner need not sell to that one and that one would
"need to make higher and yet higher offers. In
"respect of what would he make them? There can
"be only one answer—in respect of the value to him
"for his scheme. And he is only driven to make
"such offers because of the unwillingness of the
"owner to sell without obtaining for himself a share

[1] [1914] 3 K. B. 629.
[2] 16 D.L.R. 168, [1914] A.C. 569, 576.

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"in that value. Nothing representing this can be "allowed."

The evidence adduced on behalf of the defendants, eliminating the testimony of the manager, whose valuation would amount to $4,681,875, is by residents of Montreal, and partly based upon mutations of property in Montreal, which is obviously another proposition than the value of property in the City of Quebec. Moreover, their evidence is arrived at entirely upon the reinstatement basis, which does not apply in a case of this kind. This doctrine of reinstatement is thus defined by *Cripps, on Compensation,* 5th ed., p. 118:

> "There are some cases in which the income de-
> "rived, or probably to be derived, from land would
> "not constitute a fair basis in assessing the value
> "to the owner, and then the principle of rein-
> "statement should be applied. This principle is
> "that the owner cannot be placed in as favorable
> "a position as he was in before the exercise of
> "compulsory powers, unless such a sum is as-
> "sessed as will enable him to replace the premises
> "or lands taken by premises, or lands which
> "would be to him of the same value. It is not
> "possible to give an exhaustive catalogue of all
> "cases to which the principle of reinstatement is
> "applicable. But we may instance churches,
> "schools, hospitals, houses of an exceptional
> "character, and business premises in which the
> "business can only be carried on under special
> "conditions or by means of special licenses. In a
> "case heard at Edinburgh it was sought to extend
> "the principle of reinstatement to a case in which
> "a portion of a public garden had been taken, but

"such a contention was rightly set aside by the "arbitrator (Lord Shand)."

See also *Browne & Allan, Law of Compensation.*[1]

The doctrine of reinstatement does not apply to a case of this kind. The property was not a going concern manufacturing gas.

Then this basic element of the reinstatement valuation bears also on its face an apparent fallacy, since it rests upon the assumption the market price of these properties rests upon what the owners on Henderson or Ramsay Streets we are told said, in 1917, they would ask for their property, which is entirely built upon. True, the buildings are of no value to the taker, the party expropriating; but they represent to the owner a substantial value which forms part of the market value of such property, and it would be another reason to differentiate the price of these as compared to the Gas Company's property. And it may well be assumed that if these proprietors on Henderson and Ramsay Streets were so approached they knew the actual position of affairs in that neighbourhood in 1917 when seen by these witnesses or other persons; but they are not entitled to share in the value of the land to the taker. Then, if not to rebut, to mitigate this inflation in the price of properties in the block, we have the testimony of Giroux, who says that in February, 1915, he could have bought lot 1946, in the Henderson and Ramsay block, at $5.13 a square foot, including buildings, and which without the buildings would bring the land down to $3.37, and that lot 1948 was sold at $6 or $7 with buildings.

The evidence of the claimants is therefore adduced entirely upon a wrong basis, a wrong princi-

[1] 2nd ed., pp. 103, 656.

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ple, leaving the court without any help therefrom.

The Crown's evidence appears to be based upon the value of properties in the neighbourhood, and while with perhaps one exception where the buildings were of great value, the prices paid were all below the amount of their valuation of the present property, although the block taken is large as compared to some of these sales and that a smaller piece usually commands a larger price than a large block proportionately.

The claimants' and the Crown's evidence with respect to value is very far apart. It runs from $75 and $14 to $2 a foot. How can these valuations be best reconciled, without, however, overlooking the claimants' evidence is on a wrong basis and of no help to the court? What can help out of this conflict and difficulty, if not sales made in the neighbourhood. What can be better evidence of the market value of the present parcel of land, if not the actual and numerous sales made by neighbouring owners, and some of them under similar circumstances. These sales are a determining element to be guided by,—and what can be more cogent evidence than the sales of almost adjoining properties? *Dodge v. The King;*[1] *Fitzpatrick v. Town of New Liskeard.*[2]

Indeed, while the claimants in a case of this kind are entitled, not only to the bare value of their property, but to a liberal compensation, it does not follow that because this property is expropriated by the Crown, and that the compensation is to be paid out of the public exchequer, that the Crown in matters of expropriation is to be penalized, and it is not because the owners claim a very extravagant amount

[1] 38 Can. S. C. R. 149.
[2] 13 O. W. R. 806.

that they should be paid a larger amount than the market value of that property.

Now, I have had the advantage of viewing the premises in question, in the company of the counsel for the respective parties at bar, and after weighing the opinion of the valuators, and giving effect to such part of the evidence as appears credible and trustworthy, and taking into consideration the numerous sales of properties in the neighbourhood and the surrounding conditions, I have come to the conclusion to allow, not the bare value of the land, but the most liberal and generous price possible under the circumstances, namely, the sum of $3 a foot, this amount to include all damages whatsoever, if any, resulting from the expropriation, as well as the usual 10 per cent. for compulsory taking; and in arriving at that figure, due consideration has been given to the enhanced value flowing from the element of special adaptability which went to establish the market value of that land at such a high price.

The area expropriated of 62,558 1-3 square feet, at $3 a foot, will represent the sum of..$187,675.00
To which shall be added the sum of..... 32,000.00
as representing the value of the buildings, as above set forth.....

Making the sum of.....$219,675.00

Undoubtedly the property was taken against the will of the owners, and in consideration of this compulsory taking, ten per cent. has been included in the liberal amount allowed for the land taken. I advisedly say for land taken, because the value of the buildings having been arrived at by consent, and the parties are praying for judgment therefor, and were ten per cent. added to the value of the buildings the

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owners would be given that which they do not ask—it would be allowing *ultra petita*. Therefore ten per cent. has been allowed on the amount of the compensation for the land only.

The Power Company is the transferee to the compensation money, as above set forth, of such rights the City of Quebec had in this property at the time of the expropriation, under the deed above referred to. Mr. Morgan, K.C., counsel at bar for the Gas Company, states he is quite willing that the compensation money herein should be paid either to the Quebec Gas Company or to the Power Company, Therefore, it becomes unnecessary to investigate and ascertain the compensation in respect of the respective rights of these two companies and segregate the same. The moneys will, therefore, be made payable to the defendants, the Quebec Gas Company and the Power Company, upon giving good title to the Crown, the Trust Companies releasing their pledge or lien upon the property, if they have any.

Therefore, there will be judgment as follows:

To wit:

1st. The lands expropriated herein are declared vested in the Crown as of April 24th, 1913.

2nd. The compensation for the land taken, for the buildings thereon erected, and for all damages whatsoever, if any, resulting from the expropriation, is hereby fixed at the sum of $219,675, with interest thereon at the rate of five per centum per annum from April 24th, 1913, to the date hereof.

3rd. The defendants, the Quebec Gas Company, and the Quebec Railway, Light, Heat and Power Company, are entitled to be paid the said sum of $219,675, with interest as above mentioned, upon giving to the Crown a good and satisfactory title,

free from all hypothecs and incumbrances whatsoever, including a release from the Royal Trust Company and the Montreal Trust Company, respectively.

4th. The Quebec Gas Company is further entitled to its full costs as against the plaintiff on the issue traversing the information. The City of Quebec, and the Quebec Light, Heat and Power Company, are, as against the plaintiff, entitled to such costs necessarily and legitimately incurred in respect of such rights the defendant, the City of Quebec, had in the lands herein. The Crown will recover, as against the Quebec Light, Heat and Power Company, the general costs on the contention raised by the latter, the said costs to be set off, *pro tanto,* as against the other costs the Power Company is recovering.

The Royal Trust Company is also entitled, as against the plaintiff, to its costs on the appearance of counsel at trial, under the circumstances above set forth. There shall be no costs to either party on the issue as between the Quebec Gas Company and the Quebec Railway, Light, Heat and Power Company.

*Judgment accordingly.**

Solicitors for plaintiff: *Pentland, Stuart, Gravel & Thomson.*

Solicitor for Quebec Gas Co.: *E. A. D. Morgan.*

Solicitors for City of Quebec: *Chapleau & Morin.*

Solicitors for Royal Trust Co.: *Taschereau, Roy, Cannon & Co.*

Solicitor for Quebec Railway, Light, Heat & Power Co.: *L. G. Belley.*

* Affirmed on appeal to Supreme Court of Canada, May 7, 1918.