

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

1916  
Feb. 10.

PLAINTIFF,

AND

THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND, TRADING INTO HUDSON'S BAY,

DEFENDANTS.

*Expropriation—Water lots—Basis of valuation—Municipal assessment—Advantages—Wharf.*

The basis or starting-point for the valuation of water lots, expropriated by the Crown for the purpose of wharf improvements, may be had from a municipal assessment of the property, taking into consideration the higher assessable value of the land owing to its location, and the advantage afforded to the owners as a result of the improvements.

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

Tried before the Honourable Mr. Justice Audette, at Winnipeg, January 26, 27, 28, 1916.

*H. E. Kennedy* and *E. Bailey Fisher*, for plaintiff.

*S. J. Rothwell, K.C.*, and *H. A. Bergman*, for defendant.

AUDETTE, J. (February 10, 1916) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that certain lands, belonging to the defendants, were

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taken, under the provisions of the *Expropriation Act*, by His Majesty the King, for the purpose of a public work, namely, for an approach to a proposed wharf on the Pas River, by depositing on October 6th, 1914, a plan and description of such lands, in the office of the Registrar of Titles for the Land Registry District of Neepawa, in the Province of Manitoba, in which Land Registration District the same are situate.

The total area of the land taken—inclusive of the two pieces of land respectively described in paragraph 2 of the information—contains by admeasurement (0.13) thirteen one-hundredths of an acre.

The Crown, by the information, offers the sum of \$1,000 in full compensation for the lands so taken and for all damages resulting from the expropriation.

The defendants at bar, by their plea, as amended at the trial, claim the sum of \$5,500 for the lands taken and for all damages consequent thereto.

The defendants' title is admitted.

By expropriating the piece of land of (0.02) two hundredths of an acre—described in sub-paragraph (b) of paragraph 2 of the information, the access, by Larose Avenue, to the defendants' property has been absolutely taken away, and the expropriation made in that manner would, indeed, have resulted in very serious damages to the defendants' property. However, counsel for the Crown, acting under the provisions of sec. 30 of the *Expropriation Act*, filed at trial an undertaking dedicating to the public for the purposes of a public road or highway for ever this piece of land of (0.02) two hundredths of an acre. As a result of such undertaking the parcel of land marked "A", on plan "C", will now

be used by the public and the defendants as a continuation of Larose Avenue, leaving thus free, open and untrammelled, the access to the defendant's property by that avenue.

This undertaking removes entirely from the consideration of this case the question of damages, leaving for adjudication only the question of the value of the lands taken.

On behalf of the defendants the following witnesses were heard:

*Auguste de Tremaudan*, eliminating the question of damages, and the rights of wharfage, valuing the lands taken at \$5,000.

*Neil T. McMillan* values Plot "B" at \$1,925, and Plot "A" at \$760—in all the sum of \$2,685, eliminating the two elements above mentioned.

Under similar aspect, *C. S. Tyrrell*, values Plot "B" at \$1,900 and Plot "A" at \$760—making in all \$2,660.

*George M. Brown* values the two plots at \$2,500—although upon being asked by the Crown to place a value upon the land, his valuation for the same, as appears by Exhibit No. 6, is only \$1,000. This witness's mentality and judgment are obviously affected by the interest of the party who calls upon him for the expression of his opinion, a circumstance which will necessarily go to make his valuation of very little use and reliability. Eliminating wharfage rights and damages, witness *Harry C. Beatty* values the two pieces of land at \$7,000. There was some further evidence on behalf of the defendants with respect to the general facts of the case.

On behalf of the Crown the following witnesses were heard:

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*C. H. Anderson* and *David E. Brown*, who placed a value upon the two plots at the total sum of \$1,000.

*Henry Elliott*, the secretary of the Town of Pas, states that the defendants' property, containing 3.30 acres, was assessed in 1914, at the sum of \$30,000. In 1915, exclusive of buildings, the land was also assessed at \$30,000. The original valuation of the assessors for that year (1915) had been \$40,000, but was reduced by an order of the court to \$30,000.

Two of the defendants' witnesses, *de Tremaudan* and *Beatty*, hold substantial interests in real estate at The Pas for speculative purposes, and I venture to say that their valuation is based more on speculative value than upon the real market value. *G. M. Brown's* testimony, for the reasons given above, must be eliminated. Then we remain with the disinterested evidence of both *McMillan* and *Tyrrell* at \$2,685 and \$2,660 respectively, based upon the market value of the property, as against the evidence of the Crown at \$1,000.

To reconcile this conflicting evidence recourse should be had to the municipal assessment to be used only as a basis or starting-point. Although such assessments are under the statute directed to be made at the actual value of the property (R.S.M., ch. 117, sec. 29), it must be taken to be so done in a conservative manner. Under the municipal basis for the 3.30 acres at \$30,000, the (0.13) thirteen one-hundredths of an acre would represent a valuation of about \$1,181.81. Using this as a starting-point, one must consider that a small piece of land, carved out, as it is in the present case, in an irregular shape, with the base of the triangle abutting on the river, the apex of the triangle where the property is worthless, cut in that shape, would call for a larger

price than the regular piece of land. Hence, the proper valuation of a parcel of land taken in that shape would be assessed at a higher figure than where the whole of the property or a large part thereof is taken, and also at a higher figure than the municipal assessment made, as said before, in a conservative manner.

The defendants own the land abutting on the river, but they are not proprietors of the part covered by the water and have no right to build wharves or make any erection in the river, without leave from the Crown. *Gillespie v. The King*.<sup>1</sup>

This prospective public work, this wharf which the Crown is now putting up, will be of great advantage to the defendants.

Taking all these circumstances into consideration, I hereby assess the value of the land at the sum of \$1,700, to which should be added 10% for the compulsory taking of the same against the wish of the owner, making in all the sum of \$1,870.

Therefore, there will be judgment as follows:

1st. The lands expropriated herein are declared vested in the Crown since the 6th day of October, 1914.

2nd. The compensation for the land taken, and for all damages resulting from the said expropriation, is hereby assessed at the sum of \$1,870, with interest thereon at the rate of five per centum per annum, from October 6th, 1914, to the date hereof.

3rd. The defendants are entitled to be paid the said sum of \$1,870, with interest as above mentioned, upon giving to the Crown a good and sufficient

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<sup>1</sup> 12 Can. Ex. 406.

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title, free from all mortgages and incumbrances whatsoever.

4th. The defendants are further entitled to the rights and privileges mentioned in the undertaking filed at trial herein.

5th. The defendants are further entitled to their costs.

*Judgment accordingly.*

Solicitor for plaintiff: *E. B. Fisher.*

Solicitors for defendants: *Rothwell, Johnson, Bergman & McGhee.*