1917
March 3.

IN THE MATTER OF THE PETITION OF RIGHT OF

EUGENE LAMONTAGNE.....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Expropriation—Plan and description—Sufficiency—Expropriation Act, sec. 8—Sheriff's sale after expropriation.

Where a large area of land, composed of several cadastral lots, has been expropriated by the Crown for the purposes of a military training camp, the deposit of a plan and description giving the number of lots in severalty, the concessions and parishes in which such lands are situate, together with a red line upon the plan shewing the external boundary and mete of the camp, and the description referring to the same, in the following words: "this is a plan and description of certain lands, as shewn on the plan "within lines marked in red."

Held, such plans and descriptions are satisfactory compliance with the requirements of sec. 8 of *the Expropriation Act* (R.S.C. 1906, c. 140), identifying with certainty the lands taken and conveying such notice both to the owners thereof and the public.

2. A sale upon the owner at the date of the deposit of such plan and description made by the sheriff several months thereafter is to be treated as made *super non domino*, the lands being vested in the Crown, and the sale declared null and void.

PETITION OF RIGHT to recover the alleged value of certain real property expropriated by the Crown for the purposes of the Valcartier training camp.

The case was heard before the Honourable Mr. JUSTICE AUDETTE at Quebec, Nov. 23, 1916, and Feb. 9 and 10, 1917.

E. Belleau, K.C., and *M. Dupré*, for Crown; *F. O. Drouin*, K.C., for petitioner.

AUDETTE, J. (March 3, 1917), delivered judgment.

The suppliant, by his petition of right seeks to recover the sum of $10,800, the alleged value of certain real estate or immoveable property expropriated by the Crown and claimed by him under the circumstances hereinafter set forth.

On September 15, 1913, the Crown, requiring for the purposes of the Valcartier training camp—a public work

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of Canada—a large area of land, including lot 17 in question herein, deposited in pursuance of sec. 8 of *the Expropriation Act*, a plan and description of the lands so taken in the Registration Division of Quebec.

A certified copy of this plan and description, filed herein as Exhibit No. 2, shows in severalty the cadastral numbers of the lots taken, together with the concessions and parishes in which they are situate. On the plan appears the description of the lands so taken, and as the question of the validity of this description constitutes the main issue in this case, it will be recited herein in its entirety. It runs as follows:—

"All those lots, pieces or parcels of land situate, lying "and being in the Parish of St. Gabriel De Valcartier "County of Quebec, Province of Quebec, and more particu- "larly described as follows:—Consisting of Lots 1 to 43 "inclusive: Concession 1 (new and old); Lots 54 to 95 "inclusive: Concession 2 (new and old); Lots 96 to 154 "inclusive: Concession 3 (new and old). This is a plan and "description of certain lands, *as shewn on plan within lines* "*marked in red*, taken for the use of His Majesty the King, "and to be used for military purposes, and made and de- "posited of record in the office of the Registrar of Deeds, "for the County of Quebec, in the Province of Quebec, "pursuant to the provisions of *The Expropriation Act.*"

The plan is dated August 28, 1913, and is signed by the Secretary of the Department of Militia and Defence.

When the plan and description were so deposited in the registry office, one Arthur Giguere was the owner of lot 17 therein included. He had had part of the lot subdivided in November, 1912, and having failed to pay this survey, he was sued for the same and the lands were, in November, 1913 (after the said plan and description had been so deposited) seized under a writ of *fieri facias* and the sheriff, ignoring the expropriations by the Crown, sold the same for the sum of $1,850 on January 10, 1914, to Eugene Lamontagne, the suppliant, who now claims, by his petition of right, the sum of $10,800 as compensation for this lot 17.

To complete the narration of the facts of the case in a chronological order, it may be well to mention, although immaterial for the purpose of deciding the matters under

consideration, that the Crown only took physical possession of the lands in question, through its officers and servants, some time after the war was declared, and that is during August, 1914. Furthermore, the Crown, on August 31, 1914, deposited in the registry office a second plan and description of the lands required for the Valcartier training camp. In the last plan and description of August, 1914, the whole of the lands taken and expropriated in September, 1913, are included together with an additional area to the South of what had already been taken, in the result enlarging the area required for the camp; but the lands in question herein were included in the plan and description deposited on September 15, 1913.

When, before trial, the case was mentioned in court I directed and ordered that the trial be first proceeded with only upon the questions of law, leaving out for the present the consideration of the value of the property in question and the quantum of the compensation. In other words ordering that the questions of law be first disposed of before venturing upon the question of value and compensation.

The whole question now at Bar is as to whether or not the deposit of the plan and description of September 15, 1913, was sufficient and in compliance with sec. 8 of *the Expropriation Act*, and whether the sale made by the sheriff, in January, 1914, upon Arthur Giguere, is of any legal value.

The material part of sec. 8, of *the Expropriation Act* reads, as follows:—

"8. *Land taken for the use of His Majesty shall be laid "off by metes and bounds;* and when no proper deed or "conveyance thereof to His Majesty is made and executed "by the person having the power to make such deed or "conveyance, or, when a person interested in such land is "incapable of making such deed or conveyance, or when, "for any other reason, the minister deems it advisable so "to do, *a plan and description of such land signed by* the "minister, the deputy of the minister or the secretary of the "department, or by the superintendent of the public work, "or by an engineer of the department, or by a land surveyor "duly licensed and sworn in and for the province in which "the land is situate, *shall be deposited* of record in the office

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"of the registrar of deeds for the county or registration "division in which the land is situate and such land, by "such deposit, shall thereupon become and remain vested "in His Majesty.

"2 * * * * * * * * * *

"3. All the provisions of this Act shall, so far as they "are applicable, apply to the acquisition for public works "of such right of possession and such limited estate or "interest."

Now counsel at bar for the suppliant contends that sec. 8 of *the Expropriation Act* requires that the description of the land expropriated by the Crown should be given by metes and bounds, and that the description filed on September 15, 1913, does not comply with such statutory enactment, and that therefore the sale by the sheriff was made upon Giguere and not when the Crown was vested with the land, and that the suppliant's title is good and valid and that he is entitled to the compensation money for such land so expropriated.

It will have, therefore, to be sought what is meant by this enactment of sec. 8, requiring that the "land for the "use of His Majesty shall be laid off by metes and bounds," * * * and also " a plan and description of such "land" shall be deposited in the Registry."

It may be said *en passant* that it is not necessary that the boundaries of such land so expropriated, should be established in the manner provided by sec. 7 of the said Act—the last paragraph of that section stating it clearly.

What is the meaning of the words "metes and bounds"?

The definition of "metes and bounds" is given, by Bouvier's Law Dictionary; Cyclopedia Law Dictionary; Shumaker & Langsdorf and Black's Law Dictionary, as "The boundary-lines of land, with their *terminal points* "*and angles*. Courses and distances control, unless there "is a matter of more certain description, e.g., natural "monuments." But natural monuments are dispensed with by sec. 7 above referred to.

English's law dictionary gives also the following description:—"Mete—*A boundary line or mark.*" "Metes and "Bounds—Butts and Bounds—Bound, *The utmost limit*

"*of land.* Bound—a Limit, *A visible line designating a "limit.*"

And in "Words and Phrases Judicially Defined" under verbis, "Metes and Bounds," are defined as meaning the "boundary *line or limit of a tract*—which boundary may be "pointed out and ascertained by rivers or objects, either "natural or artificial * * * * Where a lot was in "rectangular form, a description in a levy of execution on a "certain number of acres off the *east end* was a sufficient "description by metes and bounds."

In *Cripps on Compensation* (5th ed.) p. 16, dealing with the question of plan and description, is found the following: "In *Dowling v. Pontypool & C. Rail. Co.* [1] the meaning of "the words, 'lands delineated' upon the deposited plans "was considered at great length, and it was held that they "were not limited to mean lands surrounded by lines on "every side, but included lands so sketched, represented "or shown that the owners would have notice that their "property might be taken. Hall V. C., says (p. 740) "And it must be borne in mind what the object of depositing "the plans and books of reference is, *such object being to "give notice to the public* and *landowners in particular* "where the promoters of the company propose to acquire " * * * I say, *enter upon the land with the map "and book of reference in hand;* observe the line of the "railway as laid down, the *limits* of deviation, the *several "numbers on the map* * * * * and ask yourself "the question whether the piece of land in question is "*delineated and described.* My answer is in the affirmative."

In *People v. Guthrie*[2] wherever statutory term of *metes and bounds* are discussed, it is found to be understood thereby to mean the *boundary line or* limit of tract, it being unnecessary to describe by monuments, &c., &c.

And in *Rollins v. Mooers*[3]: "The plaintiff contends that "the levies were void; that they should have set off the "estate, in the language of the statute, by metes and bounds. "This he contends by measure and by monuments . . . "The object of the legislation doubtless was, that the

[1] (1874) L. R. 18 Eq. 714; 43 L. J. Ch. 761.
[2] 46 Ill. App. 124–128.
[3] 25 Maine Rep. 192 at 195–6.

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"description of land set off *should be such as would identify* "it. Certainly to a common intent, as to such particulars, "was all that could have been intended. That which can be "rendered certain is in law considered as certain. The "lots in our township are often known and designated "by numbers. If *set off on execution by such numbers it "would be setting off by metes and bounds;* for it would be "presumable that the metes and bounds were well known, "or easily ascertainable. *It would be no more certain*, if it "were said, that it was bounded by lots numbered, &c., on "the different sides. These views are much strengthened "by the language of Mr. Justice Weston, in delivering the "opinion of the court in *Birch v. Hardy*.[1] He says: "By "metes, in strictness, may be understood the exact length "of each line, and the exact quantity of land in square "feet, rods and acres. It would be going too far to require, "that this should be set forth in every levy. The legis- "lature intended the land should be described with such "certainty that there should be no mistake as to its location."

It is useless to accumulate references to books and cases to establish and decide such a clear question as the one under advisement.

The principle of construing special acts adversely to the promoters where the language is ambiguous has not been applied in the case of a public body on which powers have been conferred to carry out works of a public character. This distinction is founded on the difference in aim between a public body carrying out a scheme for public purposes only and a company incorporated for the construction of an undertaking from which profit is intended to be derived. *Cripps' Compensation* (5th ed.), p. 23. This, however, is not said in aid of arriving at a conclusion on the plain language of the wording of the section above referred to, which, indeed, should receive a fair and just interpretation on the face of it. And though the statute must be complied with, a substantial compliance is sufficient. The substance and not the form will be looked to. *Lewis on Eminent Domain*.[2]

[1] 6 Greenl, 162.

[2] (3rd ed.) 547.

Now sec. 8 of *the Expropriation Act* should receive a fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision and enactment, according to its true intent, meaning and spirit. (Interpretation Act, sec. 15). And the language of the section ought not to be construed with such technical narrowness as would both defeat its very purpose and be refractory to common sense.

The object of the deposit of the plan and description is to give notice to the public in general, and to the owner of the land in particular, of the expropriation of such lands. Anyone taking plan No. 2 and the description going with the same, as above recited, would have not the slightest difficulty, or a moment of hesitation, in ascertaining what the Crown has actually expropriated. Indeed the number of each cadastral lot is to be found in the description and is also indicated upon the plan itself and in juxtaposition with all the other lots of the same parishes. The concessions in which lay these lots as well as the names of the parishes are also indicated both upon the plan and the description. And for greater certainty and in order to remove any possible doubt that might exist after having gone so far, the description proceeds, "this is a plan and "description of certain lands, as shown *on the plan within "lines marked in red.*" Could anything be clearer and more definite? I certainly fail to see. The red line gives the metes and bounds of what is taken, and the description of the outer boundaries of the lands so taken for the purposes of such camp, and the description must be read conjointly with the plan. On both the plan and description are found a visible red line designating the limits of the camp, the boundary line or limit of the tract of land expropriated.

The whole of each lot is taken—this lot 17 is expropriated in its entirety—and can it be seriously contended that the description would have been any better or more certain if it had been said that each lot was bounded by lots numbered so and so on the different sides. A description by cadastral numbers would seem to be a description by metes and bounds, for it would be presumable that the metes and bounds were well known or easily ascertainable.

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And as said in *Rollins v. Mooers* (supra), that which can be rendered certain is in law considered as certain. It would of course be otherwise in a case where the expropriation is for the right of way of a railway or for a small piece or parcel of land of irregular shape or carved out of a cadastral lot; but where the whole lot or the whole property is taken, and where therefore the detailed description of the same appears upon the book of reference of the cadastre, the description in its intricate details would be mere verbiage and surplusage.

The object and intention of the legislation doubtless was that the description of the land taken should be such as would identify it, and that the description should be of such certainty, that there should be no mistake as to its location and identity. Certainty to a common intent as to such particulars was all that could have been intended. And it has not been contended at bar that there was any difficulty in identifying the lot in question. Indeed it has been conceded that it was not necessary to give the description to each lot by metes and bounds, but that the Crown *doit donner quelque chose qui nous fait distinguer ce qu'elle prend.*

I must find that the Crown has given as clearly as possible, free from unnecessary details, the full, clear description of the lands taken, and any objection taken to such plan and description must be found faulty in its technical narrowness.

This case has arisen in the Province of Quebec, but this finding applies to all the Provinces of the Dominion. And, if any difference, with much more force does it apply to the Province of Quebec, where the law which there obtains is so clear on a matter of this kind. Indeed, where the cadastre is in force, as in the present case, under Art. 2168, C.C.P.Q., "*the number given to a lot upon the plan and in the book of reference is the true description of such lot, and is sufficient as such in any* document whatever." Could any thing be clearer and more rational? And with this provincial law, the intent of the federal law absolutely agrees, and the one is cited in support of the other by way of illustration and comparison.

Therefore it is found the deposit of such plan and description has been so made in compliance and in due conformity and satisfaction with the provisions of *the Expropriation Act*, and that the lands therein described became vested in the Crown on September 15, 1913, the date of the deposit of such plan. No *nuda detentio* or physical occupation was necessary for the vesting of such land in the Crown in addition to the deposit of the plan and description which by mere operation of law implied a symbolical possession—and under the provisions of sec. 22 of *the Expropriation Act*, from the date of the deposit of such plan (September 15, 1913), the compensation money stood in the stead of the land and any claim thereto was converted into a claim to such compensation. The *Queen v. McCurdy*;[1] *Partridge v. Great Western Ry. Co.*;[2] and *Dixon v. Baltimore & Potomac R. Co.*[3]

On September 15, 1913, the lands in question herein became the property of the Crown and the sale of the same, made by the sheriff, upon Arthur Giguere, on January 10, 1914, was obviously made *super non domino*, and such sale made by the sheriff was and is absolutely null and void and nothing passed thereunder. The Sheriff's title is a thing of naught that must be ignored. The suppliant, Lamontagne, the purchaser at such sale took nothing by that deed from the sheriff, as the lands were at that time vested in the Crown. *Dufresne v. Dixon*;[4] *The King v. Ross*;[5] *Hope v. Leroux*;[6] *Lafortune v. Vezina*;[7] *C.C.P. (Que.) Art. 699 and Nos. 14, 17 and 22 in Beauchamp's ed. Beauchamp's Rep. Gen.*[8] *Doutre v. Elvidge.*[9]

The owner of lot 17 at the date of the expropriation, Arthur Giguere, did not file an opposition to the sheriff's sale, which was a thing of naught; but an intervention was filed in the present case by his heirs, he appearing to have died some time in 1915. This intervention which claimed the compensation for the lands expropriated was, however, for reasons unnecessary to mention here, necessarily abandoned and withdrawn.

[1] 2 Can. Ex. 311.
[2] 8 U. C. C. P. 97.
[3] 1 Mackey (D.C.) 78.
[4] 16 Can. S.C.R. 596.
[5] 15 Can. Ex. 33.
[6] 25 Que. K. B. 130.
[7] 25 Que. K. B. 544.
[8] Vol. 4, p. 259.
[9] 7 L. C. J. 257; 9 Rep. Jud. M. 140.

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The suppliant was heard as a witness before the court and I regret to say his testimony was not given with that candour and frankness that ought to have been expected. In the first part of his testimony he says he had heard the Government had deposited plans and descriptions, but he said he did not know if it was before the sale. Yet, later on, in the course of his evidence, he says he had heard, about eight days before the sheriff's sale, that a plan had been deposited.

The suppliant was, undoubtedly, at the date of the sheriff's sale, aware of the expropriation by the Crown and yet he chose to purchase. He therefore did so at his own risk and peril, and assumed both the responsibility and consequences of such course, thus waiving in advance any right he might have had to complain. *Caveat emptor.*

How, indeed, could Lamontagne, a real estate dealer, of Quebec, ignore in January, 1914, the project of this Valcartier training camp, when the same was of such notoriety in Quebec that as far back as September 16 and 17, 1913, the Quebec papers announced the undertaking and openly described it, as will attest exhibits "A" to "A. 6" filed herein.

The date of the sheriff's sale is January 10, 1914, the date of his title is January 15, 1914, and on January 21, 1914, the suppliant had already subdivided the land, and on the 23rd of the same month was deposited the plan of such subdivision in the Department of Colonization, Mines and Fisheries, and in the Registry Office on January 27, 1914. There would appear therefore peculiar haste, which can only be explained by his anxiety to become the owner of expropriated land with a special value acquired under a subdivision. The intention underlying all of these acts is so apparent, that no more need be said in that respect.

It was proved by witnesses Matte and McBain that Giguere, the owner of the land in question in 1913, was before his death, aware of the expropriation as far back as September, 1913; and witness Lavigne, says the expropriation of 1913 was pretty well known to the public at the time and especially to those interested in the lands taken.

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I have taken under advisement the two motions to amend made at trial by counsel on behalf of the suppliant. Granting the prayer of such motions as formulated would be to allow conflicting allegations in the petition of right as between paragraphs 3 and 4 thereof, followed by the necessity for the Crown to amend its statement in defence. Both matters are found to be unnecessary, as I have decided the case upon the evidence on record. And it is not so much what is alleged as what is proved that has to be passed upon and decided. It is not the shadow we are after, but the substance. Take nothing by the two motions.

Therefore the lands in question herein and embodied in the plans and descriptions deposited on September 15, 1913, as above mentioned, are declared vested in the Crown as of September 15, 1913;

2nd. The sale by the sheriff being made *super non domino* is declared null and void; and

3rd. The suppliant is not entitled to the compensation sought by his petition of right, and he is declared not entitled to any portion of the relief so sought thereby, and the petition of right is dismissed with costs.

Petition dismissed.

Solicitors for suppliant: *Drouin, Sevigny & Drouin.*

Solicitors for respondent: *Dupré & Gagnon.*