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

PLAINTIFF;

1915
March 29

AND

ESTATE OF JOHN MANUEL,

DEFENDANT.

Expropriation—Basis of Compensation—Gentleman's Residence—"Market value" and "Intrinsic value" distinguished—"Quantity Survey Method" considered in relation to establishing market value.

Held, that the owner of property expropriated is entitled to have the compensation assessed at its market value in respect of the best uses to which it can be put, e.g. where a property has its chief value as a gentleman's residence commanding a good view and with a fairly desirable location that is the value upon which compensation should be assessed.

2. Compensation for property taken under the authority of *The Expropriation Act*, R.S. 1906, c. 143, is to be assessed upon the market value of the property and not upon its intrinsic value.

3. Distinction between the terms market value and intrinsic value stated.

4. The so-called "quantity survey method" considered in relation to ascertaining the true market value of property expropriated.

THIS was a case arising out of an information exhibited by the Attorney-General of Canada seeking to have the compensation assessed in respect of certain lands in the City of Ottawa expropriated for the purposes of the Government of Canada.

The facts are set out in the reasons for judgment.

March 10th, 11th, 12th and 13th, 1915.

The case was heard at Ottawa before the Honourable Mr. Justice Audette.

W D. Hogg, K.C., for the plaintiff;

G. F. Henderson, K.C., for the defendant.

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AUDETTE, J. now (March 29th, 1915) delivered judgment.

This case arose on an Information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that certain lands and buildings belonging to the defendant were taken and expropriated, under the provisions and authority of section 3 of *The Expropriation Act*, for the purposes of a public work of Canada, namely, the erection of Departmental Buildings for the use of His Majesty's Government, at Ottawa, by depositing a plan and description of such lands, on the 9th day of March, 1912, in the office of the Registrar of Deeds for the registration division of the City of Ottawa, in the County of Carleton and Province of Ontario.

The lands and real property so expropriated are severally described in paragraph 2 of the Information and are composed of four singular parcels or tracts of land respectively described in sub-paragraph 1, 2, 3 and 4 of said paragraph 2.

At the opening of the trial counsel for both parties declared that the compensation for the lands and real property described in said sub-paragraph 1 and 4 had been adjusted and settled for the respective sums of $33,000 and $44,000—or a total of $77,000.

The only questions now remaining before the Court is the ascertainment of the compensation for the lands and real property described in the said sub-paragraphs 2 and 3, for which the Crown, after the above intimation of the settlement of the lands in sub-paragraph 1 and 4, now offers the sum of $100,000.

The defendant, by his counsel, also declared at the opening of the trial, in view of the above adjustment and settlement, that he now claims for the said lands

and real property described in said sub-paragraph 2 and 3, the sum of $155,000.

The question of title is admitted.

It is also admitted that the area taken on the South side of the street is of 37,456 square feet and the area on the north, also called the River side, is of 21,000 square feet.

On behalf of the defendant the following witnesses were heard: viz.: Victor V. Rogers, Theodore St. Germain, W. J. Seymour, Harry W. Staunton, and Werner Noffke.

Now this property must be assessed, as of the date of the expropriation, at its market value in respect of the best uses to which it can be put, viz.:—as a gentleman's residence commanding a good view and located in a fairly desirable portion of the City of Ottawa.

On behalf of the defendant we have the evidence of two real estate business men, who speak in respect of the value of the land and two other witness who speak respecting the appraisal of the buildings.

It will be noticed that the valuation of the land by these two real estate agents of considerable experience, contrary to the custom in Ontario, is made upon the square foot instead of upon the foot frontage basis, and their opinion is not asked as to the value of the buildings or the property as a whole, although this method of valuation comes within the scope of their daily occupation. We have been deprived of their opinion upon the value of the property as a whole and it naturally comes to one's mind to question whether this double departure from their usual course has not had the effect of inflating the assessment. Taking the figures of witness Rogers—at $1.80 a square foot for the South, it would give us in round figures $325 a foot frontage; and the North at 80 cents a square foot

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would give about $120 a foot frontage—showing figures which cannot be accepted.

On the question of value of the buildings and erections upon the property we are facing a somewhat new and unusual method of arriving at the value of the same. Two witnesses are heard on this subject. One of them takes measurements and reports upon the same and upon the depreciation and the other places a value before depreciation and a value after making an allowance for such depreciation. From their first evidence and appraisal it appears that the value of the buildings, before the allowance for depreciation, was in 1912 the sum of $78,488.31, and after allowing the depreciation the sum of $64,045.20.

Now this appraisal of the value of the buildings made under what is called "the quantity survey method", while it undoubtedly discloses the intrinsic value of the property does not necessarily establish its market value. The compensation under the statute is not to be assessed upon the basis of the intrinsic value, but upon the basis of the market value of the property.

The intrinsic value is the value which does not depend upon any exterior or surrounding circumstances. It is the value embodied in the thing itself. It is the value attaching to objects or things independently of any connection with anything else. For instance, had we to fix a proper compensation for a discarded ship-yard, formerly used in the building of wooden ships—we would be facing launch-ways, logs and piers of perhaps great intrinsic value; but if the property were thrown upon the market it would have indeed very little commercial or market value. The same might be said with respect to the numerous wharves and piers on the shores of the St. Lawrence, which were formerly used in connection with the timber

trade, when square timber was shipped in wooden bottoms—and that have since become useless and valueless, notwithstanding the fact that they have retained and have their intrinsic value which can be arrived at on this basis of quantity survey method, but which would be no criterion of their market value. Therefore the intrinsic value of the property is not what is sought here—and it would be proceeding upon a wrong principle to take the "quantity survey method" as a basis to ascertain the compensation as it would give the result of the intrinsic value and not of the market value.

The compensation in the present case should be arrived at upon the basis of the market value of the property, taking into consideration all the circumstances above mentioned, viz.: the location, the advantageous view and its uses as a gentleman's residence.

Although the market for a property of this class, is somewhat limited, as is disclosed by the evidence, it has nevertheless a commercial value.

The "quantity survey method" evidence submitted by the defendant—quite proper in valuations for the merger of companies—must be held not to be the proper method to follow in expropriation matters. This intricate valuation, made by the combination of two separate individuals, takes us away from the real market value of the property, as above set forth, which is obviously the proper basis of valuation in assessing compensation for lands expropriated, as decided by the Supreme Court of Canada, in *Dodge* v. *The King*, (1) and under numerous other authorities. The effect of such a finding in the present case throws the overwhelming weight of the evidence in favour of the Crown. And indeed the evidence adduced by the Crown is given by a very credible

(1) 38 S.C.R. 155

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class of witnesses who have approached the assessment on the proper basis of market value; and among these witnesses we have Mayor Porter, whose high character and good standing in the community, backed as they are by a very large experience of twenty-five years in this line of business, makes his evidence worthy of weighty consideration.

How is the value of property ascertained and established on the market if not from the prices paid in the mutation of property in the neighbourhood? The McLean property, referred to in the testimony of several witnesses, compared vary fairly with the property in question and $200 a foot frontage was allowed. Then one of the defendant's properties, the Bowling Green, immediately adjoining the present lands to the west was assessed and settled for on a basis of $150 foot frontage. It is true the land is lower and does not command as good a view as the plateau upon which the dwelling house is erected; but the garden which is part of the property to be assessed herein, being lot No. 40 is still on the slope and yet the ratio of $222.50 is extended to cover that part as well as the eastern lots 41 and 42. The valuation on behalf of the Crown for the property as a whole ranges in round figures from $75,000 to $91,000. It would seem that the assessment of the compensation should not be made on the basis of separating and segregating the various factors or component parts of the buildings and the land—although all these elements must be taken into consideration—but the property must be regarded as a whole and its market value as such assessed as of the date of the expropriation. *The King* v. *Kendall*, (1) affirmed on appeal to the Supreme Court of Canada; *The King* v. *N.B. Ry. Co.* (2); and *The King* v. *Loggie*, (3). It may be

(1) 14 Ex.C.R. 71. (2) 14 Ex.C.R. 491. (3) 15 Ex.C.R. 386.

said here that the doctrine of re-instatement which was mentioned in the course of the trial does not obtain in a case like the present one. (1).

I have had the advantage of viewing the premises in question, accompanied by counsel for both parties, and looking at the River lot, and realizing the topography of the same which presents a cliff of very abrupt and precipitous decline, I cannot see it has the value of $65.00 a foot frontage or $11,000 altogether —the value put upon it by the Crown's witnesses— unless by way of placing upon it a very large additional value it may acquire to the joint owner on the North side opposite, to assure the view and give him an access to the river. It has a very restricted level space which can hardly be called a plateau.

Viewing the property as a whole and taking all the legal elements of compensation into consideration, as above set forth, this property, with its age, the amount of money that would be required to modernize it, would seem to be worth in the neighbourhood of $80,000, thus leaving still the very large margin of $20,000 to reach the sum of $100,000 tendered by the Crown; a margin which would go to cover the usual amount for compulsory taking, for moving and other incidentals of that nature, leaving available a further sum which would go to make the compensation especially liberal and generous. It must therefore be found that the amount of $100,000 offered by the Crown at the opening of the trial, is just and sufficient under the circumstances.

The property, ever since the date of the expropriation, has remained in the possession of the defendant and there will therefore be no interest allowed on the compensation money.

(1) *Wilson* v. *The King*, 15 Ex.C.R.

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There will be judgment as follows, viz.:

1. The lands expropriated herein and described in the information in sub-paragraph 2 and 3 of paragraph 2 thereof are declared vested in the Crown since the date of the expropriation.

2. The compensation for the lands and real property so expropriated and for all damages resulting therefrom are hereby fixed at the sum of $100,000 which the defendant is entitled to recover upon giving to the Crown a good and sufficient title free from all incumbrances whatsoever.

Judgment accordingly.

Solicitors for the plaintiff: *Hogg & Hogg.*

Solicitors for the defendant: *MacCracken, Henderson, Greene & Herridge.*