IN THE MATTER OF THE PETITION OF RIGHT OF

1915
Nov. 24.

NAZAIRE DEMERS.....SUPPLIANT ;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Government railway—Expropriation—Gravel-pit—Compensation—Basis of value.

Where land was taken for the purpose of a gravel-pit for a government railway, the price paid on the sale of the land some three years after the expropriation of the right of way when the land had been enhanced in value by the operation of the railway, was held to be the best test and starting-point for ascertaining the market value of the land.

THIS was a petition of right seeking compensation of certain lands taken for the purposes of a gravel-pit by the National Transcontinental Railway in the Province of Quebec.

The case was tried at Quebec on the 6th and 8th days of November, 1915.

Ernest Roy, K.C., for suppliant.

P. J. Jolicoeur for the Crown.

AUDETTE, J. now (November 24th, 1915) delivered judgment.

The suppliant brought his petition of right to recover compensation for certain lands, being portions of lots 467, 468 and 469 of the official cadastre of the Parish of Notre-Dame du Mont Carmel, in the County of Kamouraska,—together with a portion of lot No. 4, Range "A", in the Township of Painchaud, which

have been expropriated by the Crown, for the purposes of the National Transcontinental Railway, by depositing, on the 27th January, 1914, a plan and description of the said lands in the registry office for the County of Kamouraska, in the Province of Quebec. Possession of these lands had, however, been taken on the 1st July, 1913.

The total area of land taken, by this expropriation of 1913-14, is thirteen and sixty-five hundredths acres (13·65) as appears by the plan and the amended description deposited in the Registry Office.

Previous to this expropriation, the Transcontinental Railway on the 12th July, 1909, expropriated and purchased from T. St. Onge, the suppliant's *auteur* in the present case, (6·97) six and ninety-seven hundredth acres out of lots 468 and 469 for the sum of $450.00, for the lands and all damages, including severance,—and on the 10th August, 1909, (3·2) three and two hundredths acres out of lot 467, from Thomas Plourde, also the suppliant's *auteur*, for $150.00, this amount covering the land and damages including the severance of his property in two pieces. On the 24th March, 1909, The Transcontinental Railway also purchased from Achille Desjardins et. al. again the suppliant's *auteurs*, (3·17) three and seventeen hundredths acres out of No. 4, Painchaud Township, for $150.00, this price covering the land and damages, including severance.

After the Transcontinental Railway had so acquired from the suppliant's *auteurs* the necessary land for the right of way, and when the construction of the railway was in full operation, the suppliant purchased, namely in September and October, 1912, the whole of the balance of lots 468 and 469, containing about 192 acres for the sum of $1,500. or about $7.81 an acre;

1915

DEMERS v. THE KING.

Reasons for Judgment.

the balance of lot 467, containing about 100 acres for the sum of $600., or $6.00 an acre, and parts of No. 4, Range "A", in the township of Painchaud, containing about 100 acres for the sum of $1,400.00. or $14.00 an acre. These lands were purchased from the same owners who sold in 1909 to the Trans-continental Railway for the right of way.

Now this expropriation of 1913-1914, made eight or nine months after the suppliant had acquired these lots, was so made for the purpose of taking the gravel upon these (13·65) thirteen and sixty-five hundredth acres, and the suppliant claims as the value of the same the sum of $30,000.00.

The Crown traverses this claim by its plea and offers $35.00 an acre, or the sum of $472.15 with interest from the date of the expropriation.

The suppliant who is a wood-dealer, contends, by his evidence, that at the time of his purchase, the right of way was laid out and work had been done upon the same, but the railway was still under construction;—that he purchased these lots from farmers who held them as wood lands (terres-à-bois). They were not cultivated and he is wont to impress upon the Court he purchased for the wood and for the gravel-pit upon them,—indeed, he states that when he paid $1,500, for lots 468 and 469, he did so on account of the gravel pit, and that without the latter he would have only given $1,000, and for lot 4, instead of giving $1,400, he would have only given $1,000. However, in this respect, he is not supported or borne out by witness J. B. Plourde, who obtained for Demers the option for the purchase of these lands. Indeed, Plourde says that wood lots, in a general way, in that neighborhood are worth from $10.00 to $15.00,—from $15.00 to $20.00 an acre, when part of it is

burnt, as in the present case, and that lots that are not burnt sell as high as $60.00 an acre. Therefore the suppliant, at the price he paid really purchased at a very low price, and there would be no reason to infer from his statement that he paid more because of the gravel-pit,—although such consideration does not really affect the case as it stands. And there were other places where the railway could take gravel, and part of the gravel on the suppliant's property was not of very good quality and could not be used for concrete. The Transcontinental Railway by this last expropriation took from the suppliant two parcels of land, or two gravel-pits, upon the lots so purchased in 1912, and the question now is what was the value of these gravel-pits at the date of the expropriation in January, 1914, or rather on the 1st July, 1913, when the railway took possession of the same, as provided, by section 22 of *The Expropriation Act.*

It was held in *Vezina v. The Queen,* (1) that where land is taken by a railway company for the purposes of using the gravel thereon as ballast, that the owner is only entitled to compensation for the land so taken as farm land, (or wood land as the case may be), when there is no market for the gravel.

But we are beyond that stage. The first expropriation for the right of way was in 1909, and this expropriation of 1913 is about four years after, when the railway is still under construction. The suppliant is entitled to the market value of the land at the date of the taking possession, (*Sec. 22 Ch. 143 R.S.C. 1906*).

This property changed hands in September and October 1912, as between a vendor willing to sell, but not obliged to sell, and a purchaser not bound to buy, but willing to buy, and about four years

(1) 17 S.C.R. 1.

1915

DEMERS v. THE KING.

Reasons for Judgment.

after the expropriation for the right of way. It had then the potential enhanced value the completion of the construction of the railway could give it. The expropriation took place about nine months afterwards (1st July, 1913) and before the railway had been completed and was in operation. There certainly could not be a better illustration of the market value of these lands in the autumn of 1912 than the price paid by the suppliant himself, not pressed to buy and not buying at a forced sale. The price he paid for the lands in 1912,—four years after the first expropriation for the right of way and when the railway was still under construction, affords the best test and the safest starting point for the present inquiry into values (1).

Has the market value of these lands changed much between the autumn of 1912, when purchased by the suppliant and the time of the second expropriation, 1st July 1913. There is nothing in the evidence to show it had changed,—the railway was still under construction and witness Beaulieu contends that the price for these lands was the same in 1912, 1913 and 1914.

Whatever potentialities those lands had in 1913, at the date of the last taking, they also had them in the autumn of 1912—the conditions being about the same. The railway was under construction, with perhaps the fact that in 1913, it was closer to its completion and of being operated.

The suppliant makes up his claim of $30,000. for these few acres in the Parish of Notre-Dame de Mont Carmel, on a basis of five cents a yard for gravel *in situ*. However, inasmuch as this property had a market value, had a price, as a whole in

(1) Dodge *v.* The King, 38 S.C.R. 149; Fitzpatrick *v.* The Town of New Liskeard, 13 Ont. W.R. 806.

1915

DEMERS v. THE KING.

Reasons for Judgment.

1912, and taking into consideration whatever potentialities it had at that time, it should also have a market value as a whole, per acre, at the date of the taking in July 1913, without going into abstract calculations with respect to the quantity of material *in situ*, at so much per yard. To pursue such a course would lead to fanciful and absurd valuation. Then why should an amount arrived at by measuring every yard in the pit, be paid at one time. Assuming it could be sold, it would take many years to dispose of it with heavy expenditure for getting it out, plant, outlay of capital, etc. and with profits coming in gradually and being in very small amounts at a time,—if, however, the industry and honesty of the management could ever justify it, a contingency to be reckoned with (1).

This property must be valued as a whole by the acre, at the date of the expropriation.

Taking into consideration all that has been said, that lots, with no parts burnt, are selling at $60.00 an acre; and that the 13·65 acres which are not burnt are taken at two different places, that is in small pieces and not a purchase of a big block or the whole property; that these pieces or parcels of land are adjoining the railway, and therefore more valuable than land away from it,—and further, notwithstanding that the village is almost seven miles away, considering one part of the land taken is reasonably close to a station—the sum of $100.00 an acre, under the circumstances would be a very liberal compensation. To this sum will be added 10 per cent for the compulsory taking, making in all $1,501.50.

Therefore there will be judgment as follows, to wit:

(1) The King *v.* Kendall, 14 Ex. C.R. 71,—confirmed on appeal to the Supreme Court of Canada; The King *v.* The New Brunswick Ry. Co. 14 Ex. C.R. p. 491.

1915

DEMERS v. THE KING.

Reasons for Judgment.

1st The lands expropriated herein and described in the respondent's plea are declared vested in the Crown since the 1st July, 1913.

2nd The compensation for the land so taken and for all damages resulting from the said expropriation is hereby fixed at the sum of $1,501.50 with interest therein from the 1st July, 1913 to the date hereof.

3rd The suppliant is entitled to recover the said sum of $1,501.50 with interest as above mentioned, upon his giving to the Crown a good and sufficient title, free from all hypothecs, mortgages, charges and all incumbrances whatsoever upon the said land and property.

4th The suppliant is entitled to the costs of the action.

Judgment accordingly.

Solicitors for the suppliant: *Turgeon, Roy, Langlois & Morin.*

Solicitor for respondent: *P. J. Jolicoeur.*