

BETWEEN:

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

1915
Dec. 9.

PLAINTIFF;

AND

HUGH McLAUGHLIN, OF THE PARISH OF ST.
GABRIEL DE VALCARTIER, IN THE COUNTY OF
QUEBEC, AND THE RECTOR AND CHURCH WARDENS
OF ST. PETERS CHURCH, MORTGAGEES,

DEFENDANTS.

Expropriation—Compensation—Offer made before information filed—Amount of offer not based upon proper valuation—Market value—Market value established by sales—Costs.

Where an offer of compensation is made to the owner by the Crown prior to legal proceedings being taken to ascertain the value of the lands expropriated, such offer, if it is too liberal when tested by the evidence before the Court, is not shown to have been based on any proper valuation, and is moreover made with a view to a settlement of the claim without litigation, will not be regarded as evidence of the true market value of the land.

2. Even when the amount recovered is so much less than that claimed as to make the latter appear extravagant if negotiations for a settlement prior to action brought involve an offer by the Crown far in excess of the sum offered by the information, the defendant ought not to be deprived of his costs.

McLeod v. The King, 2 Ex. C.R. 106 considered and distinguished. *The King v. Woodlock*, 15 Ex. C.R. 429 referred to.

3. The prices paid for properties purchased in the immediate neighbourhood of land expropriated afford the best test and the safest starting point for an inquiry into the true market value of the lands taken.

THIS was an information exhibited by the Attorney-General for the Dominion of Canada for the
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expropriation of certain lands for the purposes of the Valcartier Training Camp.

The facts of the case are stated in the reasons for judgment.

The case was heard at Quebec before the Honourable Mr. Justice Audette on the 27th and 29th days of November, 1915.

G. G. Stuart, K.C., and *E. Taschereau* for the plaintiff.

F. Murphy, K.C., and *A. Laurie* for the defendant.

AUDETTE, J., now (December 9, 1915) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that, in pursuance of section 3 of *The Expropriation Act*,⁽¹⁾ certain lands and real property, in the said information described, belonging to the said defendant, have been taken and expropriated for the purposes of the Valcartier Training Camp, a public work of Canada, by depositing of record, on the 15th September, 1913, a plan and description thereof, in the office of the Registrar of Deeds for the Registration Division of the County.

The defendants' title is admitted.

The lands so expropriated are in severality described in the Information and are composed of two farm lots respectively known as lots 21 and 25, of the Cadastre of the Parish of St. Gabriel de Valcartier, containing an area of 275 acres—and two bush lots, respectively known as lots 62 and 63 of the said Parish, and containing an area of 180 acres.

(1) R.S.C. (1906) c. 143.

The Crown by the information, offers the sum of \$5,500. for the farm lots, and \$900. for the bush lots, making in all the sum of \$6,400. The defendant by his plea, claims the sum of \$29,377.30 as therein particularly set forth.

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While the expropriation took place on the 15th September, 1913, the defendant was allowed to remain in possession of his property for quite a long while after that date. He with his family left his house only on the 22nd November, 1915, and had his crops for the years 1913 and 1914, but not the crop of 1915. It is conceded by the Crown that interest may run on the compensation moneys from the 1st of May, 1915.

On behalf of the defence, Hugh McLaughlin, the owner, testified he had as good a farm as any in the neighbourhood and valued it at \$25,000—that amount to cover everything—the farm lots, the bush lots and all the buildings. He contends that in 1913, he made \$3,000 out of his farm, without making any allowance for labour, food, etc., but he has failed to satisfactorily establish that estimate prepared, as he says, with the joint help of his children.

Ernest Vallee, who has no knowledge or experience respecting the value of farms at Valcartier, bases his valuation upon the knowledge he has of farm lands at Beauport and elsewhere, and begins by placing a value upon the buildings at the sum of \$2,857. This is upon the reinstatement basis, or what it would cost to put up new buildings like those upon the property in question, and he values the whole farm at \$19,481. with the bush lots at \$2,000. However, in this valuation at \$19,481. as appears by Exhibit "B", his valuation of the wood lots is put down at \$4,320 proceeding upon a wrong basis as hereafter mentioned. This valuation also includes the scow and a bridge.

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Thomas Murphy values the whole farm, bush lots, exclusive of buildings, excepting three old ones, at \$17,334- including a few other items, as appears by Exhibit "C," and says that "the McLaughlin bush lots have been cut over quite a bit"—some parts long ago and some other parts quite recently. He purchased a 90-acre farm and bush lot—22 acres not cultivated—with pretty fair barn and stable, but house in poor condition, for \$2,600. He bases his valuation upon his own farm, seven miles from McLaughlin's place.

Arnold Maher, values the whole property, exclusive of buildings, at \$17,104. as appears by Exhibit "D," which includes a few items other than the property itself. He is not aware of any sale in Valcartier, but he calculated his valuation upon a gross return from the farm of \$3,000. to \$4,000.

Alexander H. V. McKee while placing a value of \$2,700. to \$3,000. upon the buildings, values the farm and bush lots exclusive of the buildings at \$17,104; but in that valuation, as appears by Exhibit "E," are included several items outside of the value of the property. He further testifies that if he were to buy a farm, he would value it as a whole and not as he was asked, to severally value so many acres at so much and so on—and he adds he never heard of a farm being sold in that way. He does not know of any sales in the neighbourhood.

This closes the owner's evidence. And before passing to the Crown's evidence, I wish to say that farmers when valuing, buying or selling a farm are in the habit of treating it as a whole, not separating the buildings from the land and placing a specific value upon acreage in severality, as has been done by the defendant's witnesses, and recognized as erroneous by some of his

witnesses themselves. An inflation of the true value of the land, *per se*, may very naturally result from this method of valuation, which is a departure from the usual course.

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On behalf of the Crown witness, *Col. William McBain*, valuing the defendant's farm, exclusive of bush lots, says it would not be possible to get for it \$100. over \$3,500. Coming to the bush lots he says that all the large timber has been taken away, and that as an adjunct to the farm, he would value them at \$600. He produces as Exhibit No. 3, a list of 31 properties purchased for the Valcartier Camp, which he says he acquired at the average price of \$16.57 per arpent, and is taken over several of these sales by counsel by way of comparison with McLaughlin's farm.

John Hornby values the bush lots at \$900. to \$1,000. All the good stuff has been taken away. It would not fetch that price at a sale, but that is the value to a farmer for his own use.

Fred. Lepere valued the wood lots at \$900. to \$1,000. adding that it would not be worth that to a (*marchand de bois*) wood dealer or lumberman; but it may have that value to a farmer living close by. He himself sold a 50-arpent wood-lot, at Stoneham, for \$140.

Captain A. E. McBain, speaking of the character and quality of the defendant's farm, says it is an average farm in the locality. He compares it with the McBain farm, of 270 acres, which was sold in 1911 for \$2,700 saying it is as good as the defendant's, with good buildings, good house, and several small buildings, located right in the village with a brook running through it. Comparing again the defendant's farm with the Thomas Billing property of 270 acres, which was sold in 1913 for \$3,150. including buildings, stock and agricultural implements, he says the latter property is

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worth more than the defendant's property. He places no specific value upon the defendant's property. *Thomas Billing* is heard and corroborates the previous witness's statement with respect to the sale of his farm and gives full details.

The general character of the defendant's property must be taken to be an average farm in Valcartier with good buildings, about 200 acres cleared of which 30 to 50 were yearly put under crop, but in 1913 with only 30 to 35 under crops. The property is assessed at \$950. The soil is light and sandy, and while the 30 acres on the river front are good, other parts are only fair, with about 35 to 40 acres *marshy* and *swampy*—these are the defendant's own words. A large portion is covered with moss. Some witnesses state that it is not possible to get a crop on lot 25. Lot 21 would be about an average farm in Valcartier, while lot 25 would be below the average. On the latter lot there is also a dip about 150 to 200 feet, at a slope of about 15 degrees, and the dip is all sand.

Witness McBain purchased for the camp 31 farms, at Valcartier, as appears by Exhibit No. 3, at an average of \$16.57 per arpent.

The defendant, after the expropriation of 1913, when property in that neighbourhood must be taken to have gone up, in October, 1914, purchased a 75-acre farm adjoining the camp for \$3,000. with buildings thereon erected. And it was rightly or wrongly pointed out and hinted that it had been so bought because engineers had been seen staking out land in that neighbourhood for military purposes, but which, however, were taken to be in anticipation of further expropriation in that direction. The defendant sold to his neighbour in 1912 lots number 17 and 18, a 320-acre property, with a barn on it, for \$400. The purchaser sold it afterwards

to Giguere for \$1,200. The Fogarty farm, 459 acres, was sold for \$9,000.

In December, 1913, or January, 1914, the defendant also bought a wood-lot, 3 arpents by 30, about three lots outside of the camp for \$80.

Notwithstanding the large estimate made by the defendant of his income from the farm, he was yearly buying hay.

There is in this case a special feature with respect to a certain offer for settlement, made by the Assistant Deputy Minister of the Department of Militia and Defence, under the following circumstances. On the 20th July, 1915 (see Exhibit "A") the Deputy Minister of the Department, wrote to the defendant, advising him he was sending his assistant "to visit him with a view to ascertaining whether it will not be possible to come to some mutual agreement as to the price to be paid for his property, etc."

On the 29th July, that official, accompanied by his secretary and one Mynot, whose honesty of purposes has been questioned in the course of the trial, offered the defendant for his lands and all damages, the sum of \$17,850. which offer, however, he declined *as not being enough*. The offer was afterwards withdrawn as shown by Exhibit No. 2. The official did not visit the farm and stated he was not a valuator; but had only been sent to try and arrive at a settlement out of court. It is to be regretted that this official, through illness and absence, has not been heard as a witness.

The offer was obviously made by way of a compromise to avoid litigation, and a much larger amount than the value of the property was thus offered to arrive at such a settlement—*pour acheter sa paix*, as is said in French. While an offer of this kind is often a starting point—a basis to arrive at a proper valuation

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of a property—I, however, feel quite unable to use it in this case in any manner whatsoever, because the amount is too much out of proportion with the true value of the farm, considering the evidence before the court.

Indeed, while the defendant in a case of this kind is entitled, not only to the bare value of his property, but to a liberal compensation, it does not follow that because his 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 owner claims a very extravagant amount that he should be paid a larger amount than the market value of his property assessed on a liberal basis.

What is then sought in the present case is the market value of this farm as a whole, as it stood at the date of the expropriation—the compensation, as already said, to be assessed not at the bare market value, but on a liberal basis. We have as a determining element to be guided by, a number of sales in the neighbourhood between private individuals, besides the large number of farms acquired by private agreements and sales for camp purposes at prices which by comparison, go to make the defendant’s claim very extravagant. The prices paid under these circumstances afford the best test and the safest starting point for the present inquiry into the market value of the present farm.(1)

For the farm and the buildings thereon erected I will allow \$30. an acre, which is indeed a high price for farms in that locality, making for the 275 acres, the sum of.....\$ 8,250.00

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

And considering that the buildings were perhaps a little better than the average farm buildings, I will add to that the sum of.....\$

250.00

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Making in all for the farm and buildings..\$ 8,500.00

Coming to the valuation of the wood-lots, it must be stated that much of the evidence in this respect, in fact all of the defendant's evidence, as will more particularly appear by Exhibits "B," "C," "D," and "E," has been adduced upon a wrong basis, upon a wrong principle. As was said in the Woodlock case, it is useless to juggle with figures, and to measure every stick of wood upon a lot, estimate the number of cords of wood upon the same, and upon that basis estimate the profits that can be realized out of that lot to fix its value according to such profits. In other words, it would mean that a lumber merchant buying timber limits would have to pay his vendor of limits, as the value thereof, the value of the land together with all the foreseen profits he could realize out of the timber upon the limits. In the result leaving to the purchaser all the labour and giving to the vendor all the prospective profits to be taken out of the limits. Stating the proposition is solving it; because it is against common sense and no man with a slight gift of business acumen would or could become a purchaser under such circumstances.

The defendant is entitled to the value of his wood-lots as a whole.¹ A deal of evidence has been adduced in respect to the value of these bush lots, and while I am of opinion that such lots are not worth more than \$200 to \$500, I have evidence on behalf of the Crown

(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 Railway Co., (14 Ex. C.R. 491.)

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which induces me to allow the sum of \$950. Then the defendant has been cutting extensively upon these lots, even since the expropriation, during the winters of 1914 and 1915, and at present they must be well nigh exhausted.

As already said any damages the defendant suffered with respect to his crop has been settled out of Court, but he has been put to some expenses and serious trouble in moving and finding a new home; some of his pulpwood has been taken and used by the Militia; he will lose in the sale of his scow, and for such damages and other incidentals to the expropriation, I will allow the sum of \$350.

Coming to the question of costs, I feel and realize that the case at bar is one where the amount offered is not unreasonable and the amount recovered somewhat in excess of the offer made by the Information; but where the amount claimed is so very extravagant that the (téméraire plaideur) reckless suitor should be punished and deprived of his costs under the decision of the case of *McLeod v. The King*.¹ However in view of the very large amount offered for settlement by the above-mentioned official, an incident which must have been a great factor in prompting and encouraging the defendant in magnifying his claim, I will allow costs.

In recapitulation, the assessment of the compensation will be, as follows, to wit:—

For the farm and buildings thereon erected	\$ 8,500.00
For the wood lots.....	950.00
For expenses incurred in moving, looking for a home, and all other damages incidental or arising out of the expropriation, etc.....	350.00

(¹) 2 Ex. C.R. 106.

To this amount should be added 10 per cent. for the compulsory taking—the defendant neither needing nor wishing to sell.....\$

980.00

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\$ 10,780.00

From this amount should be deducted the sum of..... 100.00
which the defendant offered to credit on the compensation he would be declared entitled to receive, if he were allowed to remove and take away the old barn upon his farm, which was at trial accepted by the Crown's counsel.

100.00

Leaving the net sum of.....\$ 10,680.00
with interest and costs, which under the proper appreciation of all the circumstances of the case is thought to represent a very liberal, fair and just compensation to the defendant.

There will be judgment as follows:—

1. The lands and real property expropriated herein are declared vested in the Crown, as of the 15th day of September, 1913.

2. The compensation for the land and real property so expropriated, with all damages arising out of or resulting from the expropriation, are hereby fixed at the sum of \$10,680. with interest thereon at the rate of five per cent. from the 1st of March, 1915, to the date hereof.

3. The defendant, McLaughlin, is entitled to recover from, and be paid by, the plaintiff the said sum of \$10,680. with interest as above mentioned, upon giving to the Crown a good and sufficient title, free from all hypothecs, mortgages, charges, rents and

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incumbrances whatsoever; the whole in full satisfaction for the lands taken, and all damages resulting from the said expropriation, and he is further declared entitled to the old barn above mentioned.

4. The defendant is also entitled to the costs of the action.

Judgment accordingly.

Solicitors for the plaintiff: *Pentland, Stuart, Gravel and Thompson.*

Solicitor for defendant McLaughlin: *F. Murphy.*

Solicitor for defendant mortgagees: *F. Murphy.*
