

1919  
Oct. 29.

IN THE EXCHEQUER COURT OF CANADA.

HIS MAJESTY THE KING,

PLAINTIFF;

v.

ALPHEDA FONTAINE AND OTHERS,

DEFENDANTS.

*Expropriation—Prospective Value—Second Invasion—Elements of Damage—Benefits due to expropriation—Quantum of damages.*

*Held*, That property used as a farm in proximity to a village, but with only a prospect that at some distant date, some parts might be sold as building lots, will be classed as farming lands, and be valued as such, and not as building lots; such prospect being too distant. *The King v. Trudel*, referred to.<sup>1</sup>

2. That in a case of second expropriation where the property has already adjusted itself to conditions created by the first invasion, the owner of property is entitled to other and different damages due to such second expropriation. *The King v. Lynch* p. poste. 198 *ante* referred to.

3. That where by second expropriation a railway takes a strip of land for a railway yard on each side of the right of way first taken, the extra inconvenience and delay due to longer crossing and to the more extensive use of the property as a yard, are elements of the damages to be allowed him.

4. That the benefits accruing to the remaining part of the property by the expropriation and the use to be made of the land taken, will be taken into consideration in fixing the quantum of damages due an owner.

<sup>1</sup> (1914), 49 Can. S. C. R. 501; 19 D. L. R. 270.

THIS is an information exhibited by the Attorney-General of Canada, alleging that the Crown has expropriated certain lands for the purposes of a Government Railway yard near Quebec city and praying to have same valued by this Court.

The trial came on before the Honorable Mr. Justice Audette at the city of Quebec, October 20, 21, 22 and 23, 1919.

*C. V. Darveau*, K.C., and *L. G. Belley*, K.C., for plaintiff.

*A. Bernier*, K.C., and *V. A. de Billy*, for defendants.

The facts are stated in the reasons for judgment of the Honorable Mr. Justice Audette, which are as follows:

AUDETTE, J. (October 29, 1919) delivered judgment.

This is an information exhibited by the Attorney-General of Canada whereby it appears that certain lands were taken and expropriated by the Crown, under the provisions of The Expropriation Act, R. S. C. 1906, C. 143 for the purposes of the Intercolonial Railway, a public work of Canada, by depositing, on 24th of August, 1915, a plan and description of the said lands, in the office of the Registrar of Deeds for the City of Levis, in the Province of Quebec.

The total area of land taken is (1.801) one, and eight hundred and one thousandths square arpents, for which the Crown offers for the land and for all damages resulting from the expropriation, the sum of \$566 and the undertaking hereinafter mentioned. The defendants claim the sum of \$2,450.00.

The title is admitted.

The lands expropriated form part of a farm, as stated in paragraphs 7 and 8 of the Statement of Defence, which was before the expropriation of August, 1916, crossed by the main line or track of

1919  
THE KING  
v.  
ALPHEDA  
FONTAINE.  
Reasons for  
Judgment.

1919

THE KING  
v.  
ALPHEDA  
FONTAINE.

Reasons for  
Judgment.

the Intercolonial Railway, running across the farm, and upon which the owners had the usual farm crossing. However, for the purposes of establishing a railway yard at the *locus in quo*, the plaintiff, in August, 1916, by a second invasion, expropriated a strip of land on both sides of the right of way respectively, and adjoining the same, namely: on the South an area of (0.555) five hundred and fifty-five thousandths of an arpent, and on the North an area of (1.246) one and two hundred and forty-six thousandths arpents,—in all (1.801) one arpent, and eight hundred and one thousandths square arpents.

The Crown has given and filed an undertaking, reading as follows:

“Report of the Committee of the Privy Council  
“approved by His Excellency the Governor-General  
“on November 29th, 1918.

“The Committee of the Privy Council have had  
“before them a Report, dated 25th November, 1918,  
“from the Minister of Railways and Canals repre-  
“senting that by an Order in Council of February  
“27th, 1917, authority was given for the settlement  
“of a number of claims for lands expropriated for  
“the purposes of the Chaudiere Junction Yard of the  
“Canadian Government Railways on the basis of  
“an appraisalment made of the parcels by the Right-  
“of-Way and Lease Agent of the Department of  
“Railways and Canals.

“By a further Order-in-Council of December 11th,  
“1917, it was explained that in estimating the  
“amounts of compensation to be paid to the several  
“proprietors, regard was had to the fact that by  
“reason of the expropriation they were deprived of  
“certain private crossings which had theretofore

“existed over the right of way of the Intercolonial  
 “Railway and by which they had access to and from  
 “the several portions of their respective farms; and  
 “that in substitution for these crossings it was pro-  
 “posed to provide a roadway along both sides of  
 “the properties expropriated and to maintain a  
 “private crossing at one end thereof, all as shown  
 “upon an attached plan. To give effect to this ar-  
 “rangement, the Attorney-General of Canada was  
 “given authority to give each of the several pro-  
 “prietors an undertaking in the following form or  
 “to the like effect:

“The Attorney-General on behalf of His Majesty,  
 “being thereunto duly authorized by Order-in-  
 “Council of the 11th December, 1917, hereby under-  
 “takes to grant to the defendant, his heirs, succes-  
 “sors and assigns, a right of way on, over and upon  
 “the two strips of land marked respectively ‘Pro-  
 “posed roadway’ upon the plan attached hereto, to  
 “and from the respective portions of his property  
 “situate on either side of the Intercolonial Railway  
 “Yard at Chaudiere Junction, by means of the  
 “private crossing marked ‘A’ upon the plan, or  
 “by the public road marked ‘B’ thereon (as the  
 “case may be) and that His Majesty will, as may be  
 “reasonably required, execute such conveyance or  
 “assurance if any, as may be necessary in order to  
 “give full effect to this consent or undertaking.”

“That two additional parcels of land at this point  
 “were, in August, 1916, expropriated for the  
 “purpose of extending the railway yard, and the  
 “Right-of-Way and Lease Agent of the Department  
 “of Railways and Canals has furnished valuations  
 “of the same, as follows:

1919

THE KING  
 v.  
 ALPHEA  
 FONTAINE.

Reasons for  
 Judgment.

1919  
 THE KING  
 v.  
 ALPHEDA  
 FONTAINE.  
 Reasons for  
 Judgment.

Owner	Area	Land value	Dam-ages	Compen-sation	Total
"Pierre Lambert . . .	0.753	\$150	\$77.00	\$277.00	
"Abraham Couture .	0.653	130	76.40	206.40	

"The Minister on the advice of the Acting  
 "Deputy Minister of the Department of Railways  
 "and Canals, recommends that authority be given  
 "for tendering to these two claimants the amounts  
 "above set out, with interest in each case at the rate  
 "of 5 per cent. per annum from the date of ex-  
 "propriation to the date of payment, and if accept-  
 "ed, for payment of the same upon the receipt of  
 "proper deeds of conveyance and release; failing  
 "acceptance the cases to be referred to The Ex-  
 "chequer Court of Canada for adjudication; in each  
 "case, an undertaking to be given in the same form  
 "or to the like effect as in the cases covered by the  
 "above mentioned Orders-in-Council, in respect of  
 "the proposed roadways referred to.

"The Committee concur in the foregoing recom-  
 "mendation, and submit the same for approval.

"(Sgd.) RODOLPHE BOUDREAU,  
 "Clerk of the Privy Council.

"The Honourable,  
 "The Minister of Railways  
 "and Canals."

"The Attorney-General on behalf of His Majesty  
 "undertakes to maintain proposed roadways above  
 "mentioned.

"(Sgd.) C. V. DARVEAU,  
 "Of Council for the Attorney-  
 "General of Canada."

This undertaking is made with the object of giving a crossing to these farmers and thereby decrease in a measure the damages which obviously flow from the deprivation of a crossing to the southern part of their farms, the buildings being on the northern side thereof.

By the undertaking the Crown has made and will maintain a road, taken out of the lands expropriated and belonging to the plaintiff, running on the northern side parallel to the railway to the end of the railway-yard, where the defendants have a crossing, over three tracks, or six rails, and two gates to open and close at that place. Thence travelling from east to west on a parallel road on the south, similar to the road on the north, he comes to the gate opening on the southern part of his farm. The distance to travel for one trip is of a distance of eleven and two-thirds arpents in length. Therefore, for the round trip, going and coming, he has to travel about 23 arpents and open four gates, instead of two as formerly.

To this element of damage there is another one represented by the farmers as being very serious in that the shunting and the obstruction of cars at the crossing, occasions serious, numerous, and at times long delays in their numerous trips from the northern to the southern parts of the farm.

Some complaint has also been set up in respect of the embankment which has been raised and by the obstruction of the cars in the yard, which obstruct the view of the southern part of the farm from the northern part thereof. Mention has also been made that the surface waters flood the roadway on the northern side of the right of way, and at places

1910

THE KING  
v.  
ALPHEDE  
FONTAINE.Reasons for  
Judgment.

1919

THE KING  
v.  
ALPHEDA  
FONTAINE.Reasons for  
Judgment.

spread on the southern part of the northern parcel of the farm; but, from actual observation, when viewing the premises and from the evidence, it is obvious that the farm ditches have not been kept and are not in good order, and maintained, and when these two parallel roads are maintained by the Crown, I would reckon the surface waters, which are not of any greater volume than before the 1916 expropriation, will be well taken care of, especially if the farmers themselves attend to their own boundary ditches.

Here follows a summary of the evidence.

On behalf of the owners, *Pierre Fontaine* valued the farm before the expropriation at \$12,000, and since at \$10,000. He, however, values the land taken at \$500 an arpent or \$900.50 for the land taken and the damages at \$2,000.

*Michel Lemieux* values the land expropriated at the rate of \$600 an arpent, or \$1,080.60, and the damages at \$2,000 or more, as he says.

*E. Malouin*, values the land taken at the rate of \$700 or \$1,360 for the 1.801 arpents and the damages at from \$2,500 to \$3,000.

*J. E. Plante*, values the land taken at \$650 to \$700, which at \$675 would represent \$1,215.67, and the damages at \$2,500 to \$3,000.

*Edmond Cantin* values the land taken at \$1,000, and the damages at \$2,000 to \$2,500.

On behalf of the Crown *Edmond Giroux* values the land taken at \$100 an arpent, or \$180, and the damages at \$464.10. *Alfred Couture*, at \$150, for the land taken or \$270.15 and the damages at \$600. *J. A. Dumontier*, at the rate of \$100 for the land taken or \$180, and feels unable to place a valuation

upon the damages. *Louis Jobin* also places the value of the land taken at \$180, and the damages at \$500, and *Joseph G. Couture* estimates the land taken at \$180, and the damages at \$220.

Now these farms are composed of soil of an average quality, and the exploitation of the same is of an equal standard. It is contended on behalf of the defendants that as their lands are in the neighbourhood of Charny, which keeps developing towards the east, they will ultimately be sold as building lots. While there is a prospect that some parts or portions of these farms will at some distant date be sold as such, I am forced to find that they are actually in the class of farming lands, with the possibility and ever the probability of some portions being sold in building lots in the future,—but these lots, and especially on the Fontaine farm, will be first taken up as building lots on the extreme northern end thereof and that this prospective capability of the farms for building lots on the south is at too distant a future to class the farm as building lots. There is a large quantity of land available for building lots, if at all in demand, on the northern part of the farm for years to come before the south can be taken.

“While the prospective potentialities of the lands “should be taken into account, it is only the existing “value of such advantages at the date of the expropriation that falls to be determined. *The King v. Trudel*.<sup>1</sup>

<sup>1</sup>(1914), 49 Can. S. C. R. 501.

Then one must not overlook the important fact that this expropriation is in the nature of a second invasion. That is a railway was already running across the farm severing it in two, and that they had

1919

THE KING  
v.  
ALPHEDE  
FONTAINE.

Reasons for  
Judgment.



1919

THE KING  
v.  
ALPHEDA  
FONTAINE.Reasons for  
Judgment.

to cross a railway; but with only one track instead of a railway yard with three tracks for the Fontaine owners, who at the date of the present expropriation had to suffer all the inconvenience flowing from an ordinary expropriation.

The Crown having been asked by me, at trial, to give particulars of the amount of \$566 offered by the information, Counsel at bar stated that the plaintiff was offering for the land taken at the rate of \$200 or \$360.20, and for the damages, \$205.80, representing the total of \$566.00.

The plaintiff might at any time have placed a second and a third track on their right of way, their property, under the first expropriation, without paying any further damages. Then the fact of the establishment of a large railway yard, from the increase in the labor employment, there will result a benefit to the community at large residing in that neighbourhood, by increasing the population of Charny and creating at a future date, a demand for building lots on the northern extremity of the farm and thus enhancing the value of this property.

Accompanied by Counsel I have had the advantage of viewing the *locus in quo* and the premises in question, and after weighing the evidence, oral and documentary, and taking all the circumstances into consideration, making a fair allowance for the delays occasioned in crossing, I have come to the conclusion to allow for the land taken \$360.20, or at the rate of \$200 an arpent, and for the damages the sum of \$800, and to direct that judgment be entered, as follows, no allowance being made for compulsory taking, the amount allowed being already sufficient:

1st. The lands expropriated herein are declared vested in the Crown as of August 24th, 1916.

2nd. The compensation for the lands taken and for all damages, past, present and future, resulting from the present expropriation is hereby fixed at the sum of \$1,160.20 with interest thereon from the 24th August, 1916, to the date hereof.

3rd. The defendants are entitled to the due performance and the execution of the works mentioned in the undertaking above recited.

4th. The defendants are also entitled upon giving to the Crown a good and sufficient title, free from all mortgages, hypothecs and incumbrances, to recover from and be paid by the plaintiff the said sum of \$1,160.20, with interest as above mentioned.

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

*Judgment accordingly.*

Solicitors for plaintiff: *C. V. Darveau, K.C.*

Solicitors for defendant: *Bernier, Bernier and de Billy.*

1919

THE KING  
v.  
ALPHÉDA  
FONTAINE.

Reasons for  
Judgment.