

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

1915
June 23.

PLAINTIFF,

AND

JOSEPH ALPHONSE BLAIS AND EDOUARD
VADEBONCOEUR,

DEFENDANTS.

Expropriation—Compensation—Value—Prospective capability.

In estimating the amount of compensation for the expropriation of land by the Crown, the prospective capabilities of the property or its speculative value cannot be taken into consideration. The compensation should be measured by the prices paid for similar properties in the immediate neighbourhood.

INFORMATION for the vesting of land and compensation therefor in an expropriation by the Crown.

Tried before the Honourable Mr. Justice Audette,
at Quebec, June 17, 1915.

E. Belleau, K.C., and *J. J. Larue*, for plaintiff.

A. Dion, for defendant.

AUDETTE, J. (June 23, 1915) delivered judgment.

This is an information exhibited by the Attorney-General whereby it appears, *inter alia*, that certain lands belonging to the defendant Blais, were expropriated, under the authority of 3 Ed. VII. ch. 71, for the purposes of The National Transcontinental Railway, by depositing a plan and description of the same, on June 27th, 1913, with the Registrar of

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Deeds within the Registration Division where the said lands are situated.

The defendant Vadeboncoeur held a mortgage or hypothec dated February 8th, 1905, both upon the lands in question and other lands belonging to the said defendant Blais, namely, on lots 60 and 61, but the defendants by their plea alleged that the said mortgage had been paid, and also filed as Exhibit "C" the release or *mainlevée* of the said mortgage or hypothec.

The plaintiff offers by the information the sum of \$1,753.30 and the defendant Blais claims the sum of \$12,000 for the lands taken.

The property in question in this case is a small piece of land of irregular shape and containing 860 square feet, upon which a small shed is erected. It has a frontage on Crown Street of 13.1 feet, 44.7 feet on Prince Edouard Street, extending to a larger depth at its most western depth from Prince Edouard Street. The property is admittedly too small to be placed in the industrial class. It is undesirable as residential, because it is immediately adjoining the railway—with gates upon Crown Street at its north-eastern boundary to stop the traffic at the time of the passage of a train, thereby occasioning from time to time the gathering of both pedestrians and vehicles and blocking the traffic at that very place. It is claimed on behalf of the defence to be most desirable for commercial purposes, for the installation of a shop of some kind. But would it be rational for anyone to give \$12,000 for such a small piece of land, located as it is, to carry on a small business at a place of that kind? No one would invest such a capital on such a small piece of land, if consistent with the expectancy of a return on such a capital.

The evidence of the owner is mainly based upon alleged offers made and refused with respect to this property and properties in the neighbourhood; but that evidence is unsatisfactory in the sense that in no case the party offering and the party to whom the offer was made have been heard. Either one or the other has been heard and mostly the party to whom it has been made, with perhaps one exception, but not both, and such alleged offers were all verbal, none in writing. This class of evidence has been carried to the narrowest conception it can be put to, where one woman is brought in the witness box to prove that her nephew in the course of a visit told her if she cared to sell her property, which is situated on Crown Street, and build upon, some little distance south of the property in question, she would get \$20,000.

On behalf of the Crown we have evidence based upon actual sales of neighbouring properties and in the close neighbourhood. This property was expropriated in June, 1913, and it is at that date the value must be ascertained. On behalf of the defence great stress is laid on the prospective capabilities of the property on account of the new market, etc., which will become operated when the Crown's works on the St. Charles River are completed, and it is contended that while it may not have the market value asked for at the time of the expropriation, that by holding the property for some indefinite time it will with time acquire more value. This prospective capability appears upon the evidence to be too remote and distant, if it exists at all, and realizable as too far and too indefinite a future to be taken into consideration,—and this value becoming exclusively speculative does not disclose the real market price at the date of the expropriation.

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After considering and weighing the evidence, and the prices paid for the properties in the neighbourhood, I consider the compensation should be reckoned as follows:

860 feet at \$2 a foot.....	\$1,720.00
The small shed	200.00
	<hr/>
	\$1,920.00

And as the property is compulsorily taken, that is against the wish of the owner, the further sum of 10 per cent. should be allowed both for such compulsion and to cover all other unforeseen incidentals, including the moving of the effects in the shed and on the property, viz..... 192.00

Making in all.....	\$2,112.00
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There will be judgment as follows

1. The lands expropriated are declared vested in the Crown from June 27th, 1913.

2. The compensation is fixed at the sum of \$2,112, with interest thereon at five per centum from June 27th, 1913—and the defendant Blais is entitled to be paid the said compensation money, upon giving to the Crown a good and satisfactory title, free from all mortgages or incumbrances whatsoever, the whole in full satisfaction for the land taken and for all damages, if any, that may arise from the said expropriation.

3. The defendant Blais is also entitled to the costs of the action.

Judgment accordingly.

Solicitor for plaintiff: *J. J. Larue.*

Solicitors for defendants: *Gelly & Dion.*