

1921

BETWEEN:

Sept. 15.

THE KING, ON THE INFORMATION
 OF THE ATTORNEY-GENERAL OF
 CANADA.....} PLAINTIFF;

AND

THE ROYAL NOVA SCOTIA
 YACHT SQUADRON, A BODY
 CORPORATE, THE EASTERN
 TRUST COMPANY, AND HON-
 OURABLE L. G. POWER, NICH-
 OLAS H. MEAGHER AND W. B.
 R. WALLACE, TRUSTEES UNDER
 THE WILL OF PATRICK POWER,
 DECEASED.....} DEFENDANTS.

Expropriation—Allowance of 10 per cent for compulsory taking.

Where by reason of expropriation by the crown the owners of the property taken suffer materially and are put to great trouble in moving; and where the site so taken was most advantageous and one which suited their purpose to an eminent degree, and it took several years of negotiating before they were able to find a new and suitable place for their operations, the court should add 10 per cent to the fair market value of the property taken, for such contingent losses and inconveniences, in fixing the compensation to be paid for such property. [*The King v. Hunting*, 32 D.L.R. 231, followed].

INFORMATION by the Crown to have property expropriated valued by the Court.

September 15th, 1921.

Case now heard before the Honourable Mr. Justice Audette at Halifax and judgment rendered on the bench.

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Mr. T. F. Tobin, K.C., for the Crown.

Reasons for
Judgment.

P. T. Macilreith, K.C., for the Royal Nova Scotia Yacht Squadron and the Eastern Trust Company.

Audette J.

AUDETTE J. (15th September, 1921) delivered judgment.

(His Lordship after stating the various interests represented and the point in issue proceeds as follows:)

HIS LORDSHIP: I shall now proceed to give judgment in the case. After hearing the evidence and the argument by counsel for the respective parties, there will be judgment in favour of the defendant, the Royal Nova Scotia Yacht Squadron in the manner hereinafter mentioned. It is convenient to state here that the Eastern Trust Co's. interest has been satisfied, as well as the mortgage of the Power estate, the same being admitted by both counsel.

The usual judgment in expropriation cases will be entered declaring the lands in question as described in the information vested in the Crown. The compensation is fixed at the amount of \$30,270.00, with interest from the date of the expropriation to the date of the intermediate payments, if any, made since the expropriation, but no interest is to be allowed further than the present day. There will also be costs to the defendant.

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I now come to the consideration of the only question open before me for determination, that is whether or not to the amount of compensation of \$30,270.00 should be added the ten per cent which in certain cases the courts have been disposed to allow for the compulsory taking. I may say there is no text of law allowing this ten per cent for compulsory taking. The text-writers while drawing attention to the fact that there is no law to warrant such payment, state it has been customary in England to allow this ten per cent. There are instances where as much as fifty per cent was allowed in respect of agricultural lands. There are cases cited to that effect in my book, the practice of the court, under section 47 of the Exchequer Court Act.

The Exchequer Court for a number of years has adopted that view, and has allowed ten per cent in quite a number of cases which are cited in the annotation to the report of the case of *The King v. Courtney* (1), such as *Dodge v. The King* (2); *The King v. Macpherson* (3); and *Raymond v. The King* (4), and others.

Finally we come to the case of *The King v. Hunting* (5), which has not been reported in the Supreme Court reports. I think that, notwithstanding some expressions of opinion, mere obiter dicta, since that case, the *Hunting case* remains the leading case and the last word upon the subject. We find there stated by the Chief Justice, in his reasons for such allowance, the following remark in respect to the ten per cent, viz.: "The allowance of ten per cent for compulsory purchase

(1) [1916] 27 D.L.R. 247, at p. 250; (3) [1914] 20 D.L.R. 988; and 15
also, 16 Ex. C.R. 461. Ex. C.R. 215.

(2) [1906] 38 S.C.R. 149. (4) [1916] 16 Ex. C.R. 1.

(5) [1916] 32 D.L.R. 331.

has become so thoroughly established a rule from the innumerable cases both here and in England in which it has been awarded almost as a matter of course, that I certainly should not be prepared to countenance its being questioned in any ordinary case. * * * *

The ten per cent allowance does not of course profess to be anything but a covering charge and perhaps there might be cases in which it ought not to be allowed."

Then Mr. Justice Idington in the same case, said:—
 "I assume that the respective amounts tendered represent what those acting for the Crown concluded were fair market values due each party for her compensation, and that being so, I think there should have been added to each such amount the usual ten per cent thereof in way of compensation for compulsory taking. I agree that there is no rule of law rendering it an invariable consequence of compulsory taking. It, however, in the majority of cases, is no more than justice demands. In the case of men having to find another home, or place of business, it is often less than justice demands. In the case of a man in easy circumstances who holds his property as an investment and desires to replace that form of investment by another of the like character he is put in procuring it, to expense, loss of revenue and inconvenience which those taking should help to bear."

Mr. Justice Anglin, in the same case, states: that something should be added for annoyance of being disturbed in possession, and for the delay in securing other suitable premises. "Compensation should cover not merely the market value of the land, but the entire loss to the owner who is deprived of it. It must, therefore, usually exceed the market value

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though it may occasionally be less, as where the land taken is, while in the owner's hands, subject to depreciatory restrictions from which it is relieved when expropriated. The ten per cent allowance is of course independent of and additional to any sum in excess of market-value to which the owner may be entitled because of special adaptability of the expropriated premises to his purpose. * * * * Where the owner is in actual occupation and sustains all this damage, the 'additional allowance' is limited to ten per cent.'

I have taken the trouble of citing these extracts to show how the law now stands—and after having stated the law, it now becomes my duty to see whether this is a case which justifies the allowance of the ten per cent under the cases discussed, more especially the *Hunting case*. What strikes me *in limine* on the consideration of the present case is that the expropriation took place in 1913, and that it took seven years for the Yacht Squadron to find new premises. It may be proper to add that my sympathy goes with them in the circumstances.

The object of the Yacht Squadron is the promotion of aquatic sport, with the great corinthian tradition behind it, a sport in which many people have taken great interest. The Squadron has certainly suffered materially from the fact of being disturbed, as shown by the evidence. It has been put to great trouble in moving, and being deprived of a site that was advantageous and which answered their purposes to an eminent degree—and after great delay, and pourparlers and negotiations of several years, they have at last found a place because the Crown came to their rescue and by its benevolence helped them out. But that benevolence is exercised outside of the compen-

sation due the Squadron as owner of the premises taken from them. The Crown comes to their rescue, seeing what an awkward position they are in, and I have come to the conclusion that if ever there was a case where the ten per cent should be allowed, this is one, and to the \$30,270.00 there will be added the usual ten per cent.

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Judgment accordingly.

T. F. Tobin, solicitor for plaintiff.

J. A. Chisholm, for Hon. L. G. Power et al.

C. F. Tremaine for Royal Nova Scotia Yacht Squadron and the Eastern Trust Company.