

1916
 March 20.

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

AND

HUGH BOWLES,

DEFENDANT.

Expropriation—Compensation—Farm—Timber land—Valuation.

The basis of compensation for the expropriation of farm or timber lands by the Crown for training camp purposes is the market value of the property as a whole at the time of expropriation, as shown by the prices other farms had brought when acquired for similar purposes.

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

Tried before the Honourable Mr. Justice Audette, at Quebec, March 6, 9, 1916.

G. G. Stuart, K.C., and *E. Gelly*, for plaintiff.

L. Cannon, K.C., for defendant.

AUDETTE, J. (March 20, 1916) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that certain lands, belonging to the defendant were taken and expropriated by the Crown, under the provisions of the *Expropriation Act*, for the purposes of "The Valcartier Training Camp," a public work of Canada, by depositing on September 15th, 1913, a plan and description of such lands in the office of the Registrar of Deeds for the County or Registration Division of Quebec.

While this property was expropriated in September, 1913, the defendant was allowed to remain in full possession up to September 15th, 1914, when he was required to give up possession, under short notice. He had his full crop in 1913, but suffered some damage to the 1914 crop. He lived a couple of months off the farm in 1914, but came back and remained in possession of the buildings, but not of the farm, until November 1st, 1915, when he definitely left his house and went to reside somewhere else.

The defendant's title is admitted.

The lands so expropriated are in severality described in the information and are composed of three lots: Lot No. 28, of 137 arpents, 53 perches and 174 feet, and Lot 69a, of 32.097 arpents; these two lots form what is hereafter called the farm. There is also taken Lot 36, of 85 arpents, which is a bush lot. The total area of the lands taken is admitted by both parties at 255 arpents.

The Crown by the information offers the sum of \$2,150, and the defendant, by his plea, claims the sum of \$13,695.00.

On September 9th, 1913, a few days before the expropriation, the defendant gave an option upon his property at the sum of \$2,150,—upon which option the Crown, through Captain McBain, paid the sum of \$50. But the option was thereafter allowed to lapse.

An official from the Department of Militia and Defence was sent by the Deputy Minister to endeavour to effect a settlement with the defendant, and some time around the month of July, 1915, he offered the defendant the sum of \$8,000 in full settlement. Nothing came of it.

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Shortly before this official came to the defendant, one Mynot, in the employ of the Government at Valcartier, but subsequently dismissed for cause, as appears in the evidence, prepared Exhibit N, and asked the defendant to sign it. The defendant, in his evidence, says that while he was quite willing to settle for \$11,756, the amount mentioned in that document, he refused to sign it, because he had some doubt it was wrong and that Mynot wanted to catch him.

Be all that as it may, nothing came out of this option and these offers.

On behalf of the defendant, witness Hayes valued the three lots at \$9,600, adding that \$8,000 would be a fair price. Witness Vallee values Lots 29 and 69a at \$8,424; witness Corrigan values the three lots at \$8,800.

On behalf of the Crown, witness Captain A. McBain values the whole property at \$2,150, as of September, 1913, and witness Colonel William McBain places a valuation of \$2,200 to \$2,400 upon the whole farm and the wood lot. This witness also filed as Exhibit No. 3, a list of 31 properties bought by him, for the Camp, in the actual neighbourhood of the property, at an average price per arpent of \$16.57 to \$17.

One cannot lose sight of these sales, as there certainly could not be a better illustration of the market value of these farms at the time of the expropriation than the prices actually paid to such a number of proprietors, not pressed to sell, but selling at a price arrived at of their own free will. These prices afford the best test and the safest starting point in the present enquiry into the market value of the

present property. *Dodge v. The King*,¹ *Fitzpatrick v. Town of New Liskeard*,² and *Falconer v. The Queen*.³

The character of the evidence adduced by the defence is worth a passing notice. Indeed, this evidence is adduced upon a wrong basis, upon a wrong principle. To arrive at the valuation, the witnesses segregated the acreage and allowed so much for such area and so much for another area and then valued the buildings, in 1915, on the basis of what it would cost to build them. A farm or property of this kind is valued as a whole. The valuation of the wood lot is also upon a wrong principle, as mentioned in the case of *The King v. Patrick King*.⁴ See also *The King v. Kendall*,⁵ confirmed on appeal to the Supreme Court of Canada; *The King v. New Brunswick Ry. Co.*⁶

The defendant suffered some damages occasioned by the expropriation; but the statement prepared by him fixing these damages at \$668.56, is out of proportion and is grossly extravagant. Some of these items are shocking and preposterous and are better left without comment. However, while the amount claimed is extravagant and not justifiable, the defendant is entitled to some damages. He was allowed to remain upon the property after the expropriation and he certainly derived some material benefit therefrom, and for that reason it is now quite difficult to determine, out of his claim for damages, what is referable to the benevolence of the Crown, by thus allowing him to remain in possession, and

¹ 88 Can. S.C.R. 149.

² 13 O.W.R. 806.

³ 2 Can. Ex. 82.

⁴ Ante, p. 471.

⁵ 14 Can. Ex. 71, 8 D.L.R. 900.

⁶ 14 Can. Ex. 491.

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what may well constitute a legal right to compensation.

The option given by the defendant for the sum of \$2,150 and which was allowed to lapse, was perhaps given at the time for the purpose of effecting an immediate settlement without litigation, and it cannot now be claimed as binding. Yet while declining to limit the compensation to that amount, it must be relied upon to a certain extent, as a sufficient ground for not adopting the extravagant estimates made by the defendant's witnesses and by his plea.

Taking all the circumstances of this case into consideration, and without overlooking that a just and fair amount should be allowed for damages, I have come to the conclusion to fix the amount of the compensation herein at the liberal and high amount of \$5,000, inclusive of the 10 per cent. allowance for the compulsory taking, thus allowing the defendant more than double the amount of the option given by him in September, 1913.

Therefore, there will be judgment as follows, viz.:—

1st. The lands expropriated herein are declared vested in the Crown from September 15th, 1913.

2nd. The compensation for the land taken and for all damages resulting from the expropriation is hereby fixed at the sum of \$5,000, with interest thereon from September 15th, 1914, to the date hereof.

3rd. The defendant is entitled to recover from and be paid by the plaintiff, the said sum of \$5,000, with interest as above mentioned, upon giving to the Crown a good and sufficient title free from all mort-

gages and encumbrances whatsoever upon the said property.

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

*Judgment accordingly.**

Solicitors for plaintiff: *Gelly & Dion.*

Solicitors for defendant: *Taschereau, Roy, Cannon & Co.*

* Affirmed on appeal to Supreme Court of Canada, December 11, 1916.

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