JEAN VÉZINA.....CLAIMANT; 1888

June 30.

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

Government railway—Damages from operation of railway—Expropriation—Depreciation in value of land to owner—Market value.

It is the real value of the land to the owner at the time of the expropriation that must be taken as the basis of compensation; and where claimant sought to recover damages in respect of a portion of his farm as a gravel pit, but failed to show that it had a value *quoad hoc* at the time of the taking, the court declined to assess its value otherwise than as farm land.

(2). A portion of the claimant's property, although not damaged by the construction of the railway, was injuriously affected by its operation, inasmuch as near a certain point thereon trains emerged suddenly and without warning from a snow-shed, frightening the claimant's horses, and thereby interfering with the prosecution of his work.

Held: That this was a proper subject for compensation.

(3). Where certain land remaining to the owner was not appreciably affected in respect of the value it had to him for the purposes of occupation, the damages were ascertained and assessed in respect of its depreciation in market value.

THIS was a case arising out of an expropriation, for the purposes of the St. Charles Branch of the Intercolonial Railway, of certain farm property owned and occupied by the claimant Vézina in the parish of St. Joseph, county of Lévis, P.Q.

The facts of the case are fully set out in the judgment.

June 4th, 1888.

Belleau, Q. C. for claimant;

Drouin, Q. C for respondent.

BURBIDGE, J. now (June 30th, 1888) delivered judgment.

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On the 18th August, 1882, the date of the expropriation in this matter, the claimant was in possession of a farm in the Parish of St. Joseph, in the County of Lévis, Province of Quebec, containing, according to the deed under which he holds, one hundred and thirty-three (133) arpents, and according to Mr. Louis Napoléon Carrier—one of the witnesses for the claimant—about one hundred and forty (140) arpents. This farm, with the buildings then thereon, the claimant purchased in March, 1876, subject to certain seigneurial rights, for the sum of $3,650.00. Subsequently, he built thereon a house costing about $1,200.00, and a shed at a cost of about $100.00. The claimant used this farm principally for dairy purposes, and with, it appears, success and profit. It does not appear that the value of farms in this neighborhood generally, or this one in particular, increased between 1876 and 1882. Mr. Onésime Carrier—one of the claimant's witnesses—speaking on this point, said that he did not see any reason why the lands in that place would have decreased or increased in value since fifteen years before the construction of the railway. According to this evidence, the property would, in 1882, have been worth about $5,000.00; though the witnesses for the claimant placed its value, including buildings, at a date immediately preceding its expropriation, at sums ranging from $7,000.00 to $8,000.00.

The St. Charles Branch of the Intercolonial Railway crosses this property in two places, as shown in exhibits B and D,—the total area expropriated being 8.077 arpents.

In the record will be found a statement of a claim for compensation made by the claimant against the Crown in August, 1885, for $22,784.00. This is not material, however, except as showing how such claims as these are sometimes exaggerated, because the claim-

ant's attorney, on the hearing, abandoned it and proceeded upon a statement filed by him, which is as follows:

Land expropriated, 5 arpents and 10 perches	$ 800.00
44,606 cubic yards of gravel at 6 cts.	2,676.00
Damages	4,000.00
	$7,476.00

The 44,606 cubic yards of gravel were taken from a portion of the land expropriated in 1882 adjoining the right of way, and containing 2.977 arpents; and in respect thereof the question arose as to whether or not the claimant was to be paid for this land by the acre, as farming land, or by the cubic yard of contents as a gravel pit. If the claimant could have used this piece of land as a gravel pit to any more advantage than he could have used it as farming land, he would, I think, be entitled to be allowed its value as a gravel pit. But there is no evidence that it was ever so used by the claimant, or any reason to believe that it would ever have been of any use to him for that purpose. Looking, therefore, to its value to the owner at the time of the expropriation, and apart from the evidence that the land, for the purposes of a gravel pit, was worth from $80 to $100 per acre, I see no reason to allow the claimant any thing more for the piece of land than I shall allow for that immediately adjoining it, which was taken at the same time for the line of railway.

For land such as that expropriated in this case, $40 or $50 per acre would, I think, be a fair price if a considerable number of acres were so taken as not seriously to injure the balance by the manner of severance. But, taken in the place and manner in which this was taken, I am of opinion that $100 per acre is not an unreasonable value to put upon it.

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With reference to the depreciation in value of the property, the claimant's witnesses agreed generally in stating that by reason of the construction of the railway, the value of the farm had depreciated two-thirds. Two of them stated the amount of depreciation at $4,000.00,—the sum claimed in the statement of claim. I understand them to reach that amount by taking the value of the farm (probably excluding the buildings) at $6,000.00, and allowing two-thirds of that amount.

On this branch of the case, little or no assistance is given by the evidence of the witnesses called for the Crown; and were it not very clear that the witnesses for the claimant have seriously and greatly misapprehended the inconveniences occasioned by the construction of the railway, it might be that I would feel justified in allowing the claimant the amount of their estimate.

By reference to the plan and the evidence it will be seen that the farm is divided by the railway into three parts nearly equal in extent. On the north-westerly part are the claimant's house, barn and other buildings. The highway and the railway separate this part from the centre portion, and the latter is separated from the south-easterly portion by the railway, where, near the river L'Allemand, it again crosses the farm. I shall hereafter refer to these three parts respectively, and in the order mentioned, as parts 1, 2 and 3.

Part 1 is injuriously affected, not by the construction, but by the operation of the railway. The injury, as stated by the witnesses, consists in the proximity of the railway to the claimant's buildings. In addition, at a point near the claimant's barn, is the western end of a long snow-shed from which trains emerge suddenly and without notice or warning, causing the claimant's horses to be much frightened.

From part 1 to part 2, which was used principally as

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a pasture, the claimant has convenient access by a subway. The injury to part 2 consists in this, that by the construction of the railway a well and spring at the westerly end thereof were destroyed, and that access therefrom to the river L'Allemand was cut off. The claimant's cattle, before the expropriation, were accustomed to drink either at the spring or at the river; and the fences of the pasture were always so arranged as to give them access to one or the other. The witnesses for the claimant all agreed that there is not on part 2 any other spring or natural water course, and that the cattle cannot now be driven to the river L'Allemand which is on part 3. They have, I think, however, greatly magnified any difficulty there is in procuring water for the cattle.

It appears from the evidence of the claimant's son that there is at the easterly end of part 2, a ditch which is filled with water except in the dry season. When I visited the property, in the present month, there was a good stream of water running from this ditch, and it was evident, I think, from the character of the land that there would be no difficulty—at least by digging a well—in finding, at any time, an ample supply of water on part 2.

Then again, in regard to the means of access to the river L'Allemand, the witnesses who stated that there were none, are entirely mistaken. It appears that until last winter, when the snow-shed was extended, the claimant had a crossing, but that by its extension that crossing was destroyed; and witness after witness stated that there is now no way of crossing the railway because of the ballast pit. One of the witnesses, Mr. Simard, speaks of making a crossing by constructing a bridge 110 feet long by 13½ feet high. It will be observed, however, that the claimant's son does not state that there is no crossing now, and the fact is that

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there is a fair road across the ballast-pit with a reasonable grade, and a good crossing over the railway. These I saw in the presence of the claimant's attorney, and they bore evidence of having been in use. Part 2, then, is depreciated in value by the fact that the claimant must either dig a well and pump water for the cattle pasturing there, or drive them across the railway tracks for water during the dry season.

Part 3 is injuriously affected, according to the evidence of the claimant's witnesses, by the absence of any means of communication between it and part 2. In this, as I have already stated, they are manifestly mistaken. The means of communication are very good, and the depreciation is not, I think, very considerable.

It is clear, I think, from their own evidence, that the witnesses for the claimant have greatly magnified the inconveniences under which parts 2 and 3 of the claimant's property are used; and, consequently, have greatly exaggerated the depreciation thereof in value. I have no doubt, however, that the depreciation is considerable—more perhaps in the market value of the property than in its real value to the owner for the purposes of occupation. I find some difficulty in concluding how much I should allow for this depreciation. On the whole, I do not think from the circumstances of the case that it can be more than one-half of the estimate given by the claimant's witnesses; and I shall assess the compensation to be made to the claimant for the depreciation in market value of the property left to him, at one-third of that value; and, for the purpose of assessing such compensation, I find the value of the whole property before the expropriation to have been $7,000. I think the sum is large, but entirely in accordance with the evidence.

I allow the claimant:

For 8.077 arpents of land expropriated at $100 per arpent	$ 807.70
For depreciation in market value of remaining property ($7,000—$807.70=$6,192.30...	2064.10
	$2,871.80

There is no evidence of any tender and the claimant is entitled to interest from the date of expropriation, and to his costs.

The sum mentioned is, however, assessed in reference to every interest in the said property; and it is to be paid to the claimant upon his procuring for the Crown an acquittance from all persons who may have any interest therein. If this should not be possible, the right is reserved to any party interested to apply to have such sum apportioned according to such several interests.*

Solicitors for claimant; *Belleau, Stafford & Belleau.*

Solicitors for respondent; *Casgrain, Angers & Hamel.*

*On appeal to the Supreme Court of Canada by the claimant, the amount of compensation awarded him by the Exchequer Court was increased upon the assumption that damages resulting from the operation of the railway had been excluded from consideration by the latter court.