# CASES

DETERMINED BY THE

# EXCHEQUER COURT OF CANADA.

---

IN THE MATTER OF THE PETITION OF RIGHT OF

1916
April 17

DAME MARIE LOUISE RAYMOND,
and Others ... ... ... ... SUPPLIANTS;

AND

HIS MAJESTY THE KING .. .. .. RESPONDENT.

*Expropriation—Water-lot—Compensation—Basis of assessment—Actual and potential value—Permission to make erections beyond low-water mark not sought before expropriation—Effect of—"Special adaptability"—Allowance for compulsory taking.*

Where property is taken by the Crown for a proposed public work, in assessing compensation to the owner, it is not proper to treat the value to the owner both of the land, and rights incidental thereto, as a proportional part of the value of the proposed work or undertaking when realized; but the proper basis for compensation is the amount for which such land and rights could have been sold had there been no scheme in existence for the work or undertaking. On the other hand, regard must be had to the adaptability of the property for such a use and the possibilities of the same being realized.

*Cunard v. The King*, 43 S.C.R. 99; *Lacoste v. Cedars Rapids Company* (1914) A.C. 569; *Lucas v. Chesterfield Gas and Water Board* (1909) IK.B., 16; and *The King v. Wilson* 15 Ex. C.R. 282, referred to.

2. Where water-side property is expropriated by the Crown before the owner has asked for or obtained statutory permission to build wharves or other erections upon the *solum* beyond low-water mark, in the absence of evidence to show that the possibility of obtaining such permission had increased the value of the property in the market, such possibility ought not to be taken into consideration in assessing the compensation.

*The King v. Gillespie*, 12 Ex. C.R. 406; and *The King v. Bradburn*, 14 Ex. C.R. 437.

1916

RAYMOND v. THE KING.

Reasons for Judgment.

3. "Special adaptability" as used in expropriation cases does not denote something detached or separable from the value of the land in the market, but on the contrary signifies something that enters into and forms part of the actual market value.

*Sidney v. North Eastern Railway Co.* (1914) 3 K.B., 629 applied.

4. In letters-patent for a water-lot in the River St. Lawrence, granted by the Crown in the right of the Province of Canada in the year 1848, the Crown reserved the right to resume at any time possession of the property upon paying to the grantee the value of any improvements and erections thereon. The right so reserved was never exercised before Confederation.

*Held*, that the right so reserved was indivisible, and could only be exercised in respect of the whole of the land mentioned in the grant and not a part thereof.

*Quaere:* Whether the right to resume possession enures now to the Dominion Crown, or to the Crown in the right of the Province of Quebec.

*Samson v. The Queen*, 2 Ex. C.R. 30 referred to.

5. The allowance of 10% upon the market value in view of the compulsory taking of property ought not to be made when the property was acquired with the open purpose of speculating on the chances of the property being expropriated.

EDITOR'S NOTE: See commentary on the *10%* allowance for compulsory taking in the annotated case of *The King v. Courtney*, 27 D.L.R. 247; also *Re Watson and City of Toronto* (1916) 11 O.W.N. 111.

PETITION OF RIGHT to recover the alleged value of certain land or part of a beach-lot, at Lauzon, P.Q., expropriated by the Crown for a public work.

The facts of the case are fully stated in the reasons for judgment.

The case was heard at Quebec on March 9th, 10th, 11th and 13th, 1916.

*E. Belleau*, K.C. and *N. Belleau* for the suppliants;
*G. G. Stuart*, K.C. for the respondent.

AUDETTE J. now (17th April, 1916) delivered judgment.

This petitition of right is brought to recover the sum of $390,000.00, as representing the alleged value of certain land or part of a beach-lot, expropriated by the Crown, and the damages resulting from such expropriation.

The Crown, acting under the provisions of *The Expropriation Act*, expropriated at Lauzon, P.Q., part of a certain beach lot, belonging to the suppliants, for the purposes of a graving dock, a public work of Canada, by depositing, both on the 15th January, 1913, and the 16th July, 1913, plans and descriptions of the said lands, in the office of the Registrar of Deeds for the County of Levis, P.Q., where the same are situate.

It is admited and agreed upon by both parties that under the plan and description deposited on the 15th January, 1913, the area expropriated is 272,000 feet
and under the plan and description
deposited on the 16th July, 1913, the
further area expropriated is............ 317,000 "

making in all......................... 589,000 feet
which is the whole area admitted to have been expropriated by the Crown from the suppliant's property.

The Crown, by the statement of defence, avers *inter alia*, that the land, taken herein under the Expropriation Act, was originally granted by His Majesty The King's letters-patent, in favour of one Duncan Patton, whose successors in title the suppliants purport to be, and that the grant made under the said Letters-Patent, which bear date the 9th February, 1848, and are filed herein as Exhibit "D," is so made subject to the following proviso, viz.:—

"Provided further and we do hereby expressly "reserve to us our heirs and successors full power, "right and authority upon giving twelve months' "previous notice to our said grantee—his heirs and "assigns in possession of the said lot or piece of "ground, beach and premises to resume, for public

1916
RAYMOND v. THE KING.
Reasons for Judgment.

"improvements, the possession of the said lot or "piece of ground and premises on payment to him "or them of a reasonable indemnity in that behalf "for the ameliorations and improvements which "may have been made on the said lot or piece of "ground, beach and premises, to be ascertained and "determined by experts to be nominated and "appointed by our governor of our said Province "for the time being and our said grantee respect-"ively in default of an offer of the fair value of "the same being accepted."

The Crown further alleges in its statement in defence,—and it is admitted by both parties in the course of the trial,—that there are no ameliorations or improvements upon the said land so expropriated, and the respondent therefore concludes its plea by contending that the suppliants are not entitled to any compensation in respect of the value of the lands so expropriated.

At the trial, counsel for the Crown stated that no notice had been given as provided by the terms of the above recited proviso. Therefore it must be taken that the Crown, in the present issues, proceeded under the provisions of *The Expropriation Act*, with respect to the taking of the suppliants' land.

Having disposed of the question that the present case must be treated as one coming within the ambit of *The Expropriation Act*, it is perhaps well to offer a passing remark upon the question raised at trial as to whether or not the power to exercise the rights under the proviso of the Grant is in the Crown, as representing the Provincial Government or in the Crown as representing the Federal Government.

The Crown grant in question was given in 1848, that is by the old Province of Canada. And in view

of the possibility of the right of redemption upon notice, as above mentioned, being in the Province of Quebec, notice of trial was given by the suppliants to the Attorney-General for the Province of Quebec, and to the Minister of Crown Lands for the said Province,—and a copy of the pleadings served upon them, as will more clearly appear by reference to Exhibit No. 1. Nothing came out of this, and the trial went on without anyone appearing on behalf of the Province of Quebec. In the case of *Samson v. The Queen* (1), it was held, upon a similar Grant before Confederation on the south shore of the Harbour of Quebec, that the property being situated in a public harbour, the power of resuming possession for the purpose of public improvement, would be exercisable by the Crown, as represented by the Government of Canada.

However, in the view I take of this case it becomes unnecessary to decide the question.

The parties in a case instituted by Petition of Right stand in a different position from those in a case instituted by Information under *The Expropriation Act*, where by sec. 26 thereof, it is enacted that such information shall set forth "the persons who, at the "date of the expropriation, had any estate or interest "in such land or property and the particulars of any "charge, lien or incumbrance to which the same "was subject."

In a case instituted by Petition of Right it would seem the suppliant is entitled to have his own right and interest adjusted without calling in any other parties who may have any right in the same property.

The suppliants, by their answer in writing, to the Crown's statement in defence, have raised a formidable

(1) 2 Ex. C.R. 30.

1916
RAYMOND
v.
THE KING.
Reasons for
Judgment.

array of questions of law, such as the following, viz:—

1st. That the registration of the said Crown grant has not been renewed since the coming into force of the Cadastre in 1877:—See, however, Art. 2084, C.C.

2nd. That the right of redemption invoked by the Crown has been long prescribed.

3rd. That the suppliants are the owners of the land in question under a Sheriff's title, which has liberated the land of all charges or real right which might originally affect it.

4th. That the Government of the Province of Quebec is alone possessed of the right of the old Province of Canada, and that the Government of the Dominion of Canada has no right whatsoever under the said grant.

5th. That the said lands in question are outside the Harbour of Quebec, and that the Crown has renounced the right it is now setting up.

While some of these contentions set forth by the suppliants are full of interest, it has obviously become unnecessary to decide any of them because of the view I take of the case.

Indeed, this right of redemption under the provisions of the grant, if at all exercisable, can only be exercised for the whole of the land mentioned in the grant, and not for only a part thereof. It is a right which is indivisible although the object of the right is physically subject to a division, yet from the character given to it by the grant, the object becomes insusceptible not only of performance in parts, but also of division. (1) It is a right which might be exercised with respect to the whole property, but not in part, and it cannot be invoked in this case when only about one-quarter of the property is expropriated. If there were wharves

(1) Art. 1124 C. C. P. Q.

and buildings on certain parts of the property, could it be contended that the proviso in the grant would give the right to redeem only such part upon which there would be no amelioration or improvements,—destroying thereby the value of the parts improved? The terms and conditions of this power may very well be compared and assimulated to the *Droit de réméré*, right of redemption, provided for by the C.C.P.Q., wherein *inter alia* by Art. 1558 the redemption may be exacted for the whole and denied for part only.

Therefore, for the purposes of this case, it is sufficient to find that the Crown proceeded under *The Expropriation Act*,—that it did not give the notice provided by the grant, and had it given such notice the rights thereunder are not divisible and could only be exercised for the whole property.

The whole property contains an area of 2,148,600 sq. feet, of which the Crown expropriated 589,000 sq. feet, and the suppliants are entitled to the value thereof at the date of the expropriation, that value, however, is to be determined with reference to the nature of the title as decided in the case of *Samson v. The Queen* (1).

On the question of value, the following witnesses were heard on behalf of the suppliants:

Witness *A. Gobeil* values the land taken at 40 cents a square foot. In that price he reckons 30 cents for the land taken and 10 cents for damages to the balance of the property, because more land is taken on the front than at the back. He bases his valuation upon the capabilities of the land to be used for a graving dock, wharves, marine railway and ship-building. He would value the whole of the suppliants' property at 25 cents a sq. foot, adding that his whole theory

(1) 2 Ex. C.R. 30.

1916
RAYMOND
v.
THE KING.
Reasons for Judgment.

is based upon the fact that the graving dock could not be built anywhere else.

Witness *E. A. Evans,* values the land taken at 50 cents a square foot, or 40 cents a square foot for the whole lot, but taking only part values it at 50 cents.

Witness *Auger,* who being ill at the date of the trial, was examined at his residence, before the Acting Registrar, testified that the destination of the suppliants' property was to be used for graving dock, ship-building, or industries of that kind and placed a value upon it at between 40 to 50 cents. per square foot, including damages, these being approximative figures, he says. He also says he was called by the engineers who had something to do with the selection of the site of this dock and advised that it should not be at right angles with the river, as the old dock,—but that it should have a diagonal to the *east* or the *west.*

This diagonal, it will be seen by referring to the plan, was given to the east;—had it been given to the west, it would seem no part of the suppliants' property would have been necessary for the building of the new dock.

Witness *Charland,* taking into consideration the adaptability of this property for ship-building and dry dock, values it at 40 cents a square foot, including damages; adding, it is not a disadvantage to have the dry dock on the suppliants' property with respect to the balance of the property. The Dry Dock is an advantage for ship-building.

Witness *Ernest Roy* places a value of 35 cents to 40 cents a square foot for the piece taken.

On behalf of the Crown, witness *Ogilvie* testifies he offered to the Crown the Davie property right adjoin-

ing the dock at two cents a square foot, for the purposes of this graving dock.

Witness *Couture* values the land taken at 1½ cents. per square foot; and adds that the result of the expropriation is to enhance the value of the balance of the property by the prospective improvements which will be realized by the operation of the dry dock.

Witness *Giroux*, taking into consideration the advantage or *plus value* given to the balance of the suppliants' property by the graving dock, and the sales in the neighbourhood, values the land taken at 1 to 1½ cents a square foot—adding that 1½ cents. would be the maximum.

Witness *Shanks*, basing his valuation upon the Kennedy sale of the adjoining property at two cents per square foot, with wharves and buildings, values the land expropriated at 1½ cents a square foot.

Witness *Davie* contends that before the date of expropriation, the suppliants' property had no commercial value.

Now, the land expropriated herein is part of a water lot lying exclusively between high and low water marks, at Lauzon, on the south shore of the River St. Lawrence, on the Levis side of the Harbour of Quebec, and is almost facing the Montmorency Falls. As already stated, 589,000 sq. feet are taken from a total area of 2,148,600 sq. feet, and which originally came out of the hands of the Crown under the Letters Patent of 1848. The lot is of irregular shape and depth, as may be ascertained by reference to plan, Exhibit E, referred to in the said Letters Patent.

This property must be assessed, as at the date of the expropriation, at its market value in respect

1916
RAYMOND v. THE KING.
Reasons for Judgment.

of the best uses to which it can be put, taking in consideration any prospective capabilities or value it may obtain within a reasonably near future, subject, however, to the title, power and franchise possessed by the suppliants.

Great stress is laid on behalf of the suppliants, upon the assumption of the exclusive adaptability of their land for the purposes of the public work in question, namely the present graving dock. It is, however, now clearly settled that in assessing the compensation for property taken under compulsory powers, that it is not proper to treat the value to the owners of the land and rights as a proportional part of the value of the realized undertaking proposed to be carried out; but the proper basis for compensation is the amount for which such land and rights could have been sold, had the present scheme carried on by the Crown not been in existence,—but with the possibility that the Crown or some company or person might obtain those powers. *Cunard v. The King* (1); *Lucas v. Chesterfield, etc.* (2); *Lacoste v. The Cedars Rapids Co.* (3); and *The King v. Wilson* (4).

Now this assumption that the suppliants' land to the exclusion of all other lands at Lauzon, is alone adaptable for this public work is not supported by the evidence. Witness *Valiquette*, a civil engineer of great experience and in the employ of the Government for a number of years, who has been, during ten years, superintendent of the old dry dock at Lauzon, and whose business, since 1900, is in connection with all the dry docks in Canada, says he prepared some few years ago a plan filed as Exhibit "K," in connection with a tender to build a dry dock, at Levis, by the St. Lawrence Dry Dock and Ship Building Co., and

(1) 43 S.C.R. 99
(2) 1909, 1 K.B. 16.
(3) 1914, A.C. 569.
(4) 15 Ex. C. R. 283.

1916
RAYMOND
v.
THE KING.
Reasons for Judgment.

that under that plan the whole of the dock was to be built outside the suppliants' property. The construction of the present graving dock has been somewhat changed, in that it was placed in another direction as referred to in Auger's evidence. This contention of the suppliants in respect of exclusive adaptability, may well be bracketed with that class of evidence on record, that the Harbour Commissioners' property, known as the Kennedy property, could not be used for any other purposes than those for which it has been bought by the Commissioners—and that is you could not there build a marine railway, or establish a ship-yard, etc., notwithstanding that the contrary is clearly testified to by two engineers, Evans and Laflamme, one heard on behalf of the suppliants and the other on behalf of the Crown. Mr. Evans says that the suppliants' property for ship building, is just as suitable, just as advantageous as other places; but for dry dock purposes, the most advantageous. This witness further adds that there is more space between the long wharf, on the Kennedy property, and the suppliants' property than the size of the suppliants' property, and that the long wharf on the Kennedy property serves as a protection to the Kennedy property, and even to a certain extent to the suppliants' property. All of this part of the evidence is mentioned in connection with the extraordinary contention by some witness that the Kennedy property which is adjoining and which has been sold recently at two cents a sq. foot, with wharves thereon erected, is not to be compared to the property in question, because you could not build ships, marine slips, etc., thereon. The topography of the two properties is practically identical,—they are both open beach lots. Witness engineer *Laflamme* states

1916
RAYMOND
v.
THE KING.
Reasons for Judgment.

also that a ship-yard for the purpose of building ships could have been established equally well on the Kennedy property as on the suppliant's property. We have also in evidence that there was competition in the selection of Lauzon for the building of the graving dock. Such sites as Beauport, Wolfe's Cove, Lampson's Cove and the Island of Orleans; but Lauzon was preferred and duly selected.

The suppliants under the patent of 1848, had the right to erect wharves upon the land so granted,—that is between high and low water; but for the purposes of the graving dock—and the same may be said with respect to wharves, marine slips and ship-yard—that right to extend beyond low water mark was absolutely necessary. The present dry dock has two guide piers, one of them extending 600 feet out from low water mark, and the river has to be dredged for a long distance from low water mark to a depth of 30 feet. For all of this the suppliants had no title and no franchise. They have no franchise to build or put erections of any kind beyond low water mark, and that right, the property being in a public harbour, can only be obtained from the Federal Crown under the provisions of Ch. 115 of the Revised Statutes of Canada, 1906, as amended by 9-10 Ed. VII. Ch. 44. Also the fee in the bed of the river would have to be acquired. And as witness *Gobeil* put it,—a beach or foreshore would have very little value if it cannot be used for the purposes of building wharves, docks and marine railways, it is useful but for that purpose. In *Lucas v. Chesterfield Gas and Water Board* (1) and other cases in which the question of special adaptability is invoked to give the property an enhanced value, there was a complete title vested in the owners of the

(1) (1909) 1 K.B. 16.

lands expropriated which enabled the promoters to construct the works without obtaining any other or further title or franchise. In *Gillespie v. The King*, (1), confirmed on appeal to the Supreme Court of Canada, the defendant was owner on a harbour of a piece of land which was a natural site for a wharf. The Crown expropriated his land and erected a wharf thereon, and the Court in assessing the compensation, declined to entertain the view of the possibility, by the defendant, of obtaining the right to erect a wharf thereon as an element of compensation. See also *The King v. Bradburn* (2).

In the case of *The Central Pacific Railway Co., of California v. Pearson* (3) where the defendant was owner of land with riparian rights and suitable for wharf purposes, and where it was claimed that the compensation should be allowed on the basis that a wharf franchise might be given to the owner of the land, the Court at p. 262, states the law as follows:—"The testimony in relation to the value of wharf "privileges on the shore of the Sacramento River, "where the tide ebbs and flows, given for the purpose "of enhancing the value of some of the land sought "to be appropriated, was improperly received for the "obvious reason that the party *claiming the compen-"sation had no wharf franchise*. The mere fact that "the party might at some future time obtain from "the State a grant of a wharf franchise if allowed "to remain the owner of the land, is altogether too "remote and speculative to be taken into consider-"ation. The question for the Commissioners to "ascertain and settle was the present value of the "land in its condition and not what it would be

(1) 12 Ex. C.R. 406. (2) 14 Ex. C.R. 437.
(3) 35 Cal. 247.

1916
RAYMOND v. THE KING.
Reasons for Judgment.

"worth if something more should be annexed to it "at some future time."

And as stated in *Corrie v. MacDermott* (1) by Lord Dunedin, "The law of compensation being as they "have stated, namely, the value to him as he holds." See also *Benton v. Brookline* (2) and *May v. Boston* (3).

There is also the case of *Lynch v. The City of Glasgow* (4), where it was decided that the hope of obtaining the renewal of a lease should not be taken into consideration in assessing compensation in expropriation proceedings.

See also *Cunard v. The King* (5) and *Wood v. Esson* (6), two well known cases bearing upon the same point.

Therefore in the present case there was no obligation on the part of the Crown to grant the suppliants the right or franchise to build wharves or put other erections beyond the line of low water mark, and it is not even rational to expect that the Crown would have granted such franchise in view of the fact that the construction of this new graving dock was mooted, as witness *Gobeil* said, as far back as between 1900 and 1905. The suppliants had no legal right to such franchise and nothing but a legal right could form an element of compensation. The suppliants had not that right at the date of the expropriation, and it is as the property stood on that date that it is to be valued.

The element of "special adaptability" has been pressed and argued at considerable length, and upon

(1) (1914) A. C. 1065.
(2) 151 Mass. 250.
(3) 158 Mass. 21.
(4) (1903) 5 C. of Sess. Cas. 1174.
(5) 12 Ex. C. R. 414,—43 S.C.R. 88.
(6) 9 S.C.R. 239.

this question, in addition to that which has already been said, it must be admitted that the compensation which should be awarded is in no sense more than the price that the legitimate competition of purchasers would reasonably force it up to. *Sidney v. North E. Ry.* (1). This element of special adaptability is after all, nothing but an element in the general value, and as such it is admissible as the true market value to the owner and not merely value to the taker. This element of special adaptability existed and formed part of the price paid by the owners, both at the time of the Sheriff's sale and at the date of the execution of the Leclerc conveyance, because at those dates the property had hardly any other value than its prospective potentiality in its adaptability for such purposes as mentioned above.

In the case of *Sidney v. North Eastern Railway* a very instructive discussion on this question of special adaptability will be found. In that case, at page 637, Rowlatt, J. says:—

"Now, if and so long as there are several com-"petitors, including the actual taker who may "be regarded as possibly in the market for purposes "such as those of the scheme, the possibility of "their offering for the land is an element of value "in no respect differing from that afforded by the "possibility of offers for it for other purposes. As "such it is admissible as truly market value to the "owner and not merely value to the taker. But "when the price is reached at which all other com-"petition must be taken to fail, to what can any "further value be attributed? The point has been "reached when the owner is offered more than the "land is worth to him for his own purposes and

(1) (1914) 3 K.B. 641.

1916
RAYMOND
v.
THE KING.
Reasons for Judgment.

"all that any one else would offer him except one "person, the promoter, who is now, though he "was not before, freed from competition. Apart "from compulsory powers the owner need not sell "to that one and that one would need to make "higher and yet higher offers. In respect of what "would he make them ? There can be only one "answer—in respect to the value to him for his "scheme. And he is only driven to make such "offers because of the unwillingness of the owner "to sell without obtaining for himself a share in "that value. Nothing representing this can be "allowed."

And at page 576 of the *Cedars Rapids Case* (1) Lord Dunedin lays down the following rule for guidance upon the subject of special adaptabilities in the following language:

"For the present purpose it may be sufficient "to state two brief propositions:—(1) The value "to be paid for is the value to the owner as it "existed at the date of the taking, not the value "to the taker. (2) The value to the owner consists "in all advantages which the land possesses, present "or future, but it is the present value alone of such "advantages that falls to be determined.

"Where, therefore, the element of value over "and above the bare value of the ground itself "(commonly spoken of as the agricultural value) "consists in adaptability for a certain undertaking "(though adaptability as pointed out by Fletcher "Moulton, L. J., in the case cited, is really rather "an unfortunate expression), the value is not a "proportional part of the assumed value of the "whole undertaking, but is merely the price,

(1) (1914) A. C. 569.

"enhanced above the bare value of the ground "which possible intended undertakers would give. "That price must be tested by the imaginary "market which would have ruled had the land been "exposed for sale before any undertakers had "secured the powers, or acquired the other subjects "which made the undertaking as a whole a realized "possibility."

Indeed in the present case the lands expropriated would be of very little value but for this prospective potentiality, residing in its special adaptability. While this property in the days of wooden ships, and when the timber trade was flourishing at its best in Quebec, commanded perhaps a high price and was worth a good deal of money for the purposes of such trade, but when the latter disappeared, the value of that property went down to almost nothing and there was no market for it.

It appears from the evidence that this property was unoccupied and not used for between 25 to 27 years prior to the beginning of the building of this graving dock. The property had been lying idle for a number of years when it was bought, by some of the suppliants, on the 18th May, 1900, for the sum of $800, and it has never yielded any revenue of any kind ever since. On the 5th April, 1907, Mrs. Belleau deeded to Moise Leclerc one undivided half of the property,—the evidence establishing that Leclerc was actually one of the purchasers at the Sheriff's sale and that this conveyance of 1907 was only to give him title to his undivided half.

Then on the 3rd December, 1912, barely a month before the date of the expropriation, Leclerc sells his undivided half-interest in the whole of the suppliants' property, composed of 2,148,600 square feet

1916
RAYMOND
v.
THE KING.
Reasons for
Judgment.

for the sum of $30,000, to four of the above named suppliants. The conveyance recites that out of the $30,000.00, the sum of $15,000.00 is paid in cash, and that the balance will be paid to the vendor as soon as the said land, or part thereof, will have *been sold or expropriated for private or public purposes.* In the meantime the said purchasers are to pay interest on the said balance, unless they prefer liberating themselves of their debt before the said sale, either by paying this balance, or by surrendering to the vendor the land so purchased; but in so surrendering they will be barred from recovering the amount already paid on account which will be forfeited to the profit of the vendor and which will be considered as the rent of the said property. The sale of the 3rd December, 1912, is made at the rate of $0.027, that is two cents and seven-tenths of a cent, if one takes into consideration that the whole property is of an area of 2,148,600 feet, and that the sale of half of it, at $30,000, under the easy conditions above mentioned, would represent that amount for the half.

To this sale reference will be hereafter made when dealing with the compensation monies, which should be paid the suppliants, as it is indeed the best illustration of the market value of these lands in December, 1912 when the purchase was made by one not pressed to buy and not at a forced sale. There is further, no evidence to show the market value of the property could and would be different on the 3rd December, 1912, from the 15th January, 1913, the date of the expropriation.

On the 27th March, 1913, after the expropriation of part of the lands in question, in this case, the property adjoining to the east of the suppliants' beach lot, was sold at two cents a foot, and upon

1916
RAYMOND
v.
THE KING.
Reasons for Judgment.

it is a wharf of 1,500 feet long, containing 94,000 cubic yards, three small piers, shed office and a forge etc., coupled by the statement of the chief engineer of the Quebec Harbour Commission, that after purchasing the Commissioners erected a mill and tracks on the wharf, without having to make repairs to it. Adding that the wharf was in good condition at the time of the purchase and had been in use by the vendors up to the date of the sale. Deed filed as Exhibit "A."

We have, further, the offer by the Davie Company to the Government of some of their land, at two cents a foot, at Lauzon, adjoining the dock, for the purposes of the present public work.

We have also upon this question of sale of property in the neighbourhood, the purchase on the 25th January, 1916, for $4,685 of 1,413,284 sq. feet, forming what has been called the Glenbury Cove and the St. Lawrence Cove. This property was resold on the 24th February, 1916, for $7,565, taking care of a mortgage of $5,500. It is, however, well to mention that these two coves, situated at some little distance west of the suppliants' property, are not as desirable properties as that of the suppliants, the railway severing their hilly part from their shallow shore. While these two coves may be considered of the same class of property because they are beach lots, their respective value is not the same and the great balance of advantage is in favour of the suppliants' land.

By reference to exhibit "H," it will be found the whole of suppliants' property at Lauzon was assessed in 1912, at $2,000, and in 1913, the year of the expropriation, at $4,000.

1916
RAYMOND
v.
THE KING.
Reasons for Judgment.

Under the provisions of sec. 50 of *The Expropriation Act,* the Court in determining the amount of compensation must take into account and consideration, by way of set-off, any advantage or benefit, special or general, accrued or likely to accrue by the construction and operation of the public work, to such person in respect of any land held by him with the lands so taken.

There can be no doubt whatsoever, notwithstanding some isolated contention to the contrary found in the evidence,—and I so find without any hesitation,—that the balance of the property now remaining to the suppliants has been and will be greatly benefited by the present graving dock, and that in arriving at the proper compensation to be paid them, such advantage and benefit must be taken into consideration by way of set off.

In this case, as is customary in most all expropriation cases, there exists a great conflict between the evidence adduced on behalf of the suppliants and the evidence adduced on behalf of the respondent. What can help us out of this difficulty, what can reconcile the testimony of witnesses who are so far apart, if not sales of property in the neighbourhood? Is not, indeed, the amount at which owners of neighbouring property selling and buying *de gré à gré,* the best evidence of the market value of lands in that locality? Because, after all, the market value of property is as defined in *The King v. Macpherson* (1):—"The "value that a vendor not compelled to sell, not selling "under pressure, but desirous of selling, is to get from "a purchaser not bound to buy, but willing to buy."

We have the advantage in this case, as a determining element to be guided by, not only sales in the neigh-

(1) 15 Ex. C. R. 216.

1916
RAYMOND
v.
THE KING.

Reasons for Judgment.

bourhood, but the sale of half of the undivided interest in the very property expropriated, barely a month before the expropriation. The prices paid under these circumstances afford the best test and the safest starting point for the present inquiry into the market value of the present property. The best method of ascertaining the market value of property is to test it by sales in the neighbourhood. *Dodge v. The King* (1); *Fitzpatrick v. The Town of New Liskeard* (2).

Moreover, the evidence of value arrived at based upon the sales of property in the neighbourhood is obviously more cogent than the opinion evidence built upon unwarranted optimism and sometimes amounting but to mere lip-service reaching the nadir of reasonableness.

Part only of this property has been expropriated and where part only of a property is sold or expropriated, a higher price should be paid than when the whole property is taken. Then by the present expropriation a larger part is taken on the river front than on the land side; that is the piece taken is of irregular shape with more taken of the more valuable part. These two elements must be thrown in the scale in fixing a fair compensation.

Taking into consideration all that has been above set forth, making fair allowance for the fact that part only is taken and also the manner in which the expropriation is made, together with the accrued advantage and benefit to the balance of the property accruing to the owners from the public work in question, I have come to the conclusion, for the reasons above mentioned, to allow as compensation not the bare market value but a liberal value of the lands

(1) 38 S.C.R. 149. (2) 13 Ont. W.R. 806.

1916
RAYMOND v. THE KING.
Reasons for Judgment.

expropriated, which I fix at the sum of four cents a square foot—amounting to the sum of $23,560.00 the whole in satisfaction of the land expropriated and for all damages, if any, resulting from the expropriation.

This is a case where the customary 10% upon the compensation monies for compulsory taking should not be allowed. The original purchasers at the Sheriff's sale in 1900 never, up to the date of the expropriation, made any use of the property. They derived no revenue therefrom. They did not use it for themselves or for any purposes of development whatsoever. The other four parties who bought in 1912, did so buy at a speculative price, with the open and distinct object of speculating on an expropriation, as set forth in the deed of purchase itself. This Court must guard against fostering such speculation at the expense of the public and must discourage the same. While ten per cent. may be allowed the owner of premises where he, and sometimes his father, has lived upon the property for years, and is forced to sell, is dispossessed against his will in the interest of the public, and has to face the expense of moving, and should be recouped for certain contingent items,—the present case offers none of these elements, no such analogy and does not come within the class of cases where the 10% can be allowed. *The King v. Macpherson* (1); *Cripps on Compensation* (2); and *Brown & Allen on Compensation* (3).

Therefore, there will be judgment as follows: 1st. The lands expropriated herein are hereby declared vested in the Crown from the respective dates at which they have been expropriated, namely, the 15th January, and the 16th July, 1913.

(1) 15 Ex. C. R. 232. (2) 5th Ed. 111.
(3) 2nd Ed. 97.

2nd. The compensation for the land and real property so expropriated, with all damages arising out or resulting from the expropriation, is hereby fixed at the sum of $23,560.00, with interest on the sum of $10,880.00, from the 15th January, 1913, to the date hereof, and on the sum of $12,680.00 from the 16th July, 1913, to the date hereof.

3rd. The suppliants are entitled to recover from and be paid by the respondent the said sum of $23,560.00 with interest thereon as above mentioned, upon giving to the Crown a good and sufficient title, free from all hypothecs, mortgages, charges, rents and incumbrances whatsoever, the whole in full satisfaction for the land taken and for all damages whatsoever resulting from the said expropriation.

4th. The suppliants are also entitled to their costs of the action.

*Judgment accordingly*

Solicitors for the suppliants:

*Belleau, Baillargeon & Belleau.*

Solicitors for the respondent:

*Pentland, Stuart, Gravel & Thomson.*