

1916
 Oct. 20

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

AND

CHARLES H. CAHAN, AND THE EASTERN TRUST
 COMPANY DEFENDANTS.

Expropriation—Compensation—Amount offered—Court's power to reduce—Amendment.

Where the Crown in expropriation proceedings, and under the terms of the Expropriation Act, offers a definite sum as compensation by the information, and when there is no request to amend the information, and counsel for the Crown at the trial adheres to such offer, it is not for the Court to reduce the same notwithstanding that the evidence may establish a smaller sum as the proper amount of compensation.

(See *The King v. Likely*, 32 Can. S.C.R. 47.)

INFORMATION on behalf of His Majesty's Att'y-Gen'l for Canada, to have it declared that certain lands the property of the defendant C. H. Cahan are vested in the Crown.

Case tried at Halifax, N.S., September 29, 1916. before the Honourable MR. JUSTICE CASSELS.

T. S. Rogers, K.C. and *J. A. McDonald*, K.C., for Crown.

H. Mellish, K.C., for defendant.

CASSELS, J. (October 20, 1916) delivered judgment.

The property in question expropriated comprises 140,830 sq. ft. (approximately $3\frac{1}{4}$ acres). A strip of land has been taken across the property for the purpose of the terminal works, and the excavation for the railway has been constructed.

In addition to the land taken for the right of way another small piece of ground comprising 2,880 ft. has been taken for the purpose of the construction of a driveway, and the Crown offers by their information to give an undertaking to construct a bridge over the railway cutting in accordance

with the plan annexed to the information and to furnish a connection from the entrance east of the right of way to the bridge.

The Crown offers as compensation for the land taken the sum of \$9,925.65, and in addition undertakes to open the street referred to and construct the bridge.

The right of way at the point where the bridge is to be constructed is said to be 25 ft. in depth and the approaches to and across the bridge will be an easy ascent.

The whole property prior to the expropriation comprised an area of 14 acres. The right of way as stated takes about $3\frac{1}{4}$ acres and 2,880 sq. ft. for the proposed road. To the east of the right of way will be left 110,430 sq. ft. (about $2\frac{1}{2}$ acres). To the west of the right of way and partly on the arm is left about 9 acres having a frontage on the arm of about 750 ft. The house is distant from the westerly side of the right of way 180 ft. The house is now supplied with city water and no question of allowance for wells arises.

While unquestionably the property has been injured by the expropriation and the construction and operation of the railway, I am of opinion that the amount offered by the Crown is a liberal allowance coupled with their undertaking to give a new entrance as described. The house is not interfered with in any way. Mr. Cahan has about 9 acres and the house and the whole of the waterfront left to him, besides the portion to the east.

Mr. Cahan occupied the premises during 1911 as a tenant for a year, and the lease contained an option giving him the right to purchase at the sum of \$20,000. The following year, 1912, he purchased the whole property for the sum of \$17,500. The land was expropriated on March 7, 1913. He retains the greater part of the property including the house and 9 acres fronting on the arm and gets for the lands expropriated more than one-half of what he paid for the whole property, comprising about 14 to 15 acres and including the house.

I have to deal with these cases on the evidence before me. Properties situate on the north-west arm in Halifax do not seem to realize in the market prices that one would have expected, considering the beauty of the location.

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On the argument of the case I asked the counsel for the Crown whether they adhered to their tender, and was informed that the Crown offered and were willing to pay the sum mentioned. I thought and still think the amount erred on the side of liberality, but I have always been of opinion that where the Crown in expropriation proceedings and under the terms of the Expropriation Act offers a definite sum as compensation by the information, and where there is no request to amend the information and Crown counsel at the trial still offers the amount, it is not for the Court to reduce such sum.

I therefore find that the sum offered is ample, and the judgment will embody the undertaking.

I understand that the Eastern Trust Co. have been settled with. If not, their rights can be adjusted and the parties can speak to the question in chambers.

The Crown made no legal tender prior to the filing and service of the information. The defendant asks an unreasonable amount. Under the circumstances there should be no costs to either party.

Judgment for plaintiff.

Solicitors for plaintiff : *Silver & McDonald.*

Solicitors for defendants: *McInnes, Mellish, Fulton & Kenney.*
