THE KING ON THE INFORMATION OF THE ATTORNEY GENERAL FOR THE DOMINION OF CANADA, —PLAINTIFF,

1914
Dec. 7.

AND

MARGARET YOUNG WILSON, ALEXANDER WILSON AND SAMUEL WILSON, EXECUTRIX AND EXECUTORS OF THE ESTATE OF ALEXANDER WILSON, DECEASED, ET AL. DEFENDANTS.

Expropriation—Water-lot—Public Harbour—Compensation—Market Value—Approval of Erections by Crown—Expectation of Approval as Element of market value.—"Reinstatement."

In assessing compensation for lands compulsorily taken under expropriation proceedings any "special adaptability" which the property may have for some use or purpose is to be treated as an element of market value. *The King* v. *McPherson*, 15 Ex. C. R., 215 followed. *Sidney* v. *North Eastern Railway Co.* (1914) 3 K.B.D. 629 referred to.

2. In such cases the Court should apply itself to a consideration of the value as if the scheme in respect of which the compulsory powers are exercised had no existence. *Cunard* v. *The King*, 43 S. C. R. 99; *Lucas* v. *Chesterfield Gas & Water Board* (1909) 1 K. B. D. 16; *Cedar Rapids Mfg. Co.* v. *Lacoste* (1914) A. C. 569, referred to.

3. The owner of a water-lot in a public harbour under a patent from the Crown granted before Confederation cannot place erections thereon without the approval of the Governor in Council as required by Cap. 115, part 1 of R. S. 1906.

Held, that the market value of the water-lot is the proper basis for assessment of compensation, but while that value may be enhanced by the hope or expectation of obtaining authority to erect structures on the lot where there is no evidence of market value to guide it the Court will not assess compensation on a hope or expectation which cannot be regarded as a right of property in the defendant. *Lynch* v. *City of Glasgow* (1903) 5 C. of Sess. Cas. 1174; *May* v. *Boston*, 158 Mass. 21; *Corrie* v. *McDermott* (1914) A. C. 1056 referred to.

4. The doctrine of "reinstatement" i n compensation cases considered.

THIS was a case arising out of the expropriation of certain lands for the Ocean Terminal Scheme of the Intercolonial Railway at Halifax, N.S.

The facts are stated in the reasons for judgment.

October 8th and 22nd, 1914.

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The case came on for hearing before the Honourable Mr. Justice Cassels at Halifax.

T. S. Rogers, K.C., and *T. F. Tobin*, K.C., for the plaintiff.

H. Mellish, K.C., for the defendants.

CASSELS, J., now (December 7th, 1914) delivered judgment.

This is one of several cases tried before me at Halifax, between the 8th and 22nd October last. There were a series of expropriations on behalf of the Dominion Government in connection with large works undertaken with the object of providing the City of Halifax with large terminal accommodation. Millions of dollars are being spent in connection with these works, the object being to have terminal accommodation in connection with the Intercolonial Railway. For these terminals consisting of a breakwater, and several wharves with warehouses, slips, etc., it became necessary to expropriate a large area of land. Various disconnected properties were expropriated on the part of the Crown. The information embraces all of the properties of Wilson's expropriated. They consist of what is known as the wharf premises, this being the main property. The other properties, of which there are several set out in the information, are house property.

On page five of the information the Crown sets out in the paragraphs from "a" to "g" the various sums offered for these properties.

The total amount tendered by the Crown is the sum of $83,250. The amount claimed by the defendants in paragraph 5 of the statement of defence, shows a total claim of $410,500.

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The plan of expropriation was filed on the 13th February, 1913, On the 2nd October, 1913, the Crown advanced to the defendants the sum of $30,000. on account.

It may be well to notice what is more fully brought out in the case of *The King* v. *Boutilier*, (unreported) that on the 30th October, 1912, a public announce ment of the proposed scheme was made in Halifax by the Minister of Railways acting for the Premier, and the details of the scheme appeared in the daily papers of the following day. Previously to the announcement, at the request of the Government, a committee of leading merchants of Halifax had been convened by the President of the Board of Trade to consider the proposed plan of the Government. The scheme was approved of, and as I have mentioned the announcement was made on the 30th October, 1912. I mention this fact as there are references in the examination and argument of Mr. Mellish, K.C., counsel for the defendants, referring to this public announcement; and a good deal of stress is laid by counsel upon the enhancement of properties by reason of this announcement—and the claim is put forward that between this date, the 30th October, 1912, and the filing of the plan, the property in question had risen in value.

Before proceeding to deal with the case, it may be as well for the purposes of this and other cases, to consider the legal questions governing the decisions in this and the other cases.

In the case of *The King* v. *McPherson* (1), I have stated my view in regard to the law governing these cases, as to the fixing of compensation. In addition to the *Cedar Rapids* case (2), there is a valuable exposition

(1) 15 Ex. C. R. 215. (2) (1914) A. C. 569.

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of the law in the case of *Sydney* v. *North Eastern Railway Co.*, (1). Strangely enough, this case was argued and decided after the decision in the *Cedar Rapids* case, but no reference is made to it. It deals in a very clear way with the question of special adaptability. Mr. Justice Sherman in that case expresses a view entirely in harmony with what I have frequently stated in reported judgments, namely, that special adaptability is nothing more than an element of market value.

A farm in the neighbourhood of a large city and almost certain within a short time to come into the market for building purposes in the city, has special adaptability for building property, and the value given to it in the market would have regard to that.

Another point which I think may be accepted as clearly settled is, in estimating the compensation to be awarded for property taken under compulsory powers, you are to apply yourself to a consideration of the value as if the scheme under which the compulsory powers are exercised had no existence. This is laid down in *Cunard* v. *The King*, (2) by Mr. Justice Duff; and also by Mr. Justice Moulton in the *Lucas* case, (3). It was subsequently approved of and affirmed by the Privy Council in the *Cedar Rapids* case. (4).

In the case of *The King* v. *Bradburn*, (5) I have dealt with the question of what forms a navigable river, and I do not wish to repeat what I have there stated. I have also considered the effect of the provisions of Chap. 115 of the Revised Statutes, 1906, dealing withthe right to place obstructions upon navigable waters.

(1) (1914) 3 K. B. D. 629.
(2) 43 S.C.R.99.
(3) (1909) 1 K.B. 16.
(4) (1914) A.C. 569.
(5) 14 Ex. C.R. 432.

The water lots in question in these actions form part of the Harbour of Halifax. This is conceded. Under the provisions of Section 7, Chapter 115, of the Revised Statutes of Canada, 1906, approval of the Governor in Council must be obtained before the owner of these water lots can place any erections upon them. The owners by grants prior to Confederation, have obtained patents which have granted to them the fee in the bed of these water lots, extending out a considerable distance from low water mark. While the grantees own the bed of these water lots, they are not entitled to place erections thereon without the approval required by the statute. The value of these water lots has to be ascertained by reference to the market value, if in point of fact there was an element of market value arising by reason of the ownership of the bed. I don't think it is incumbent upon me to enter into the elements which create the market value. It is sufficient that the market value existed; and that market value may have been derived in part from the idea in the public mind that the grantee had certain rights; but assuming that there is no proof of market value, then there arises the question whether the hope, so called, of obtaining the approval above mentioned, should be taken into account as an element in arriving at the market value at the time of the expropriation. The question hardly arises in the particular cases before me, as the valuators for the Crown have in point of fact given compensation as if that right existed. It is an important question, and one that frequently arises, and which, according to the argument of the counsel for the Crown, has arisen in this case, and I propose to deal with it.

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In *Cunard* v. *The King* [1], it seems to have been assumed that this hope or expectation formed an element in the fixing of the compensation. It was not material in that case to decide this question, because in any aspect of the *Cunard* case the amount offered as compensation was more than adequate.

An important consideration has always to be borne in mind, it is this. In *Lucas* v. *Chesterfield Gas and Water Board* [2] and other cases of a similar kind, there was a complete title vested in the owners of the lands expropriated. All that was wanted was a market. But the market being there, the owner required no further addition to the title of the property of which he was being divested by the compulsory proceedings. In the case in question it is different, because to make the property fully available, there must be an approval; and the title to erect on the water lot would not be complete until such assent had been procured. At the time of the expropriation such assent was wanting, and therefore the owners of these water lots could not convey to any purchaser a right to erect structures. The proceedings are under the *Expropriation Act*.

In the case of *The King* v. *Brown* [3] I have set out the clauses of the *Expropriation Act*, and also of the *Exchequer Court Act*, bearing on the question of the expropriation. Section 47 of the *Exchequer Court Act*, Chapter 140, Revised Statutes of Canada, 1906, has to be considered. It reads as follows:

"47. The Court, in determining the amount to be "paid to any claimant for any land or property taken "for the purpose of any public work, or for injury "done to any land or property, shall estimate or "assess the value or amount thereof, at the time when

(1) 43 S. C. R. 99. (2) (1909) 1 K. B. 16.
(3) 12 Ex. C.R. pp. 463, 471.

"the land or property was taken, or the injury com-
"plained of was occasioned."

In *The King* v. *Bradburn*, already referred to, (1) I state:

"It may be a question whether a hope of this kind "(that is the assent required) is an element that "should be taken into account. The decisions in this "court and the Supreme Court follow the line of deci-"sions under the English Lands Clauses Act, except "where varied by local statute."

I have there given reference to several cases bearing on this question. It is a matter for the consideration of the statutes. In addition to the cases I have cited, I would refer to the case of *Lynch* v. *City of Glasgow* (2) in the Court of Sessions in Scotland, decided in 1903. It is a decision based upon *The Land Clauses (Scotland) Act*, 1845, which as far as I can see, is practically the same as the English *Land Clauses Acts* and of our '*Expropriation Act* as construed by the various decisions in this court. The question there arising was whether the hope of obtaining a renewal of a lease was an interest that should be taken into account. The Lord President in giving judgment at page 1180 uses the following language:

"I think that the Lord Ordinary is correct in saying "that there is no reported case since the Act of 1845 "was passed, in which the chance of a tenant, or his "successor, obtaining a renewal of his lease after its "natural expiry, has been taken into account in assess-"ing compensation, although the case must have "occured very frequently, and if this be so, the present "case involves a new departure of great importance "and of far reaching consequences. It appears to me "that such a claim could only prevail if it was estab-

(1) 14 Ex. C. R. 437. (2) (1903) 5 C. of Sess. Cas. 1174.

"lished that the chance or hope of obtaining a renewal "of a lease after its expiry, is an 'interest in the lands', "in the sense of the statutes, and I am unable to find "any warrant either in the statutes or in the decisions "for adopting this view. A lease during its currency "has some of the attributes of a real right or interest "in lands, but the chance of its being renewed by the "personal volition of the lessor, does not seem to me "to be in any reasonable sense an interest in land, "for the purposes of such a question as the present."

And Lord M'Laren puts it:

"And I am satisfied that there in no judicial author- "ity in support of the present claim—no authority for "holding that it is an element in awarding compen- "sation to a tenant that he may possibly have his "lease renewed."

He proceeds at page 1182: "In the present case, "I agree that the language of the section is broad "enough to cover a claim of expectancy, but then it "must be an expectation founded on legal right."

Then he proceeds: "Now, in the present case the "contingency which the arbiter proposes to value is "the chance that, at the termination of the lease, two "persons who are free to renew their relation and are "equally free to decline to renew it, might agree to "enter into a new relation for the same or a different "term of years. That is not a contingency founded "on any right, for it is admitted that there is no obli- "gation to renew the lease, and therefore I am of "opinion that the chance of renewal is not an element "which can be taken into account in valuing the "tenant's interest in terms of the statute."

And all the learned Judges in that case agreed.

In the case before me, as I pointed out, there is no obligation on the part of the Crown to approve of

the construction of works. At the time of the expropriation no such right had been obtained; and if the authorities I have quoted are correctly decided, it would seem to me that this hope of obtaining such approval could not be an element within the meaning or our statute.

In the case of *The King* v. *Gillespie*, (1) which was affirmed by the Supreme Court (unreported) the owner had a piece of land bordering on a harbour. It was a natural site for a wharf. The Crown expropriated the land, and erected a wharf for their own purposes. It was strongly argued that the possibility of the owner obtaining the right to erect a wharf should be taken into account as an element in assessing the compensation. I declined to entertain that view, and my judgment was upheld by the decision of the Supreme Court.

In the *Gillespie* case there is a distinction that the owner of the land was not the owner of the water lot, if that makes any difference.

There is a case reported in the Supreme Court of California. (*The Central Pacific Railroad Co. of C lifornia* v. *Pearson*. (2). That was a case very similiar to the *Gillespie* case, in which the owner of land had riparian rights and a suitable site for wharf purposes. In that case it was claimed that compensation should be allowed on the basis that a wharf franchise might be given to the owner of the land. The Court deals with it at page 262, 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 also improperly received,

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

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"for the obvious reason that the party claiming the "compensation 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 considera-"tion. The question for the Commissioners to "ascertain and settle was the present value of the "land in its then condition, and not what it would be "worth if something more should be annexed to it at "some future time."

I would also refer to the case of *Corrie* v. *MacDermott* reported in November, 1914, (1)—an appeal to the Privy Council from the judgment of the High Court of Australia.

This case of *Corrie* v. *MacDermott* throws considerable light upon the question. At page 1065, Lord Dunedin, who gave the judgment of the court, states:

"And further the law of compensation being as they "have stated it, namely, the value to him as he holds" etc. There is a review of the authorities in the judgment of the court below, and also in the Privy Council judgment. I think this judgment bears out what I have endeavoured to express as my view of the law. There are two cases in the Supreme Court of Massachusetts (*Benton* v. *Brookline* (2) and *May* v. *Boston* (3) where a similar view is expressed.

During the progress of the case it would appear that those who valued the land, allowed for certain house properties expropriated on the basis of replacement. In other words, they ascertained what it would cost to build a house as it stood—they made a certain allowance for depreciation and then allowed

(1) (1914) A.C. 1056.
(2) 151 Mass. 250.
(3) 158 Mass. 21.

the owner the balance. This course was adopted in most of the cases, the result being that the owners were very liberally treated in most cases. In one or two of them I do not think sufficient was allowed. But in the greater number, more than sufficient as the difference between the market value which should govern, and the replacement, so styled by the witnesses, is considerable,—the market value being considerably below the replacement value. I apprehend that what is meant by the replacement value, is in reality the doctrine of reinstatement, which in my judgment has no application to cases where private houses, such as these in question, have been expropriated.

In *Brown* and *Allan* (2nd ed.) in the appendix, p. 656, there is reported the case of the *Corporation of Edinburgh* v. *The North British Railway Co.*—a judgment of Lord Shand, relating to an alleged claim for reinstatement for a portion of the Princess Street Gardens. This case is referred to in the case of *Corrie* v. *MacDermott.* (*Supra*).

In most of the textbooks, notably *Cripps on Compensation,* (5th ed.) and *Brown and Allan,* the case of the *School Board of London* v. *The South Eastern Railway Co.,* (1) is referred to. This is a judgment of the Court of Appeal reversing the judgment of the Divisional Court. That case turned entirely upon the provisions of a special Act. The terms of the statute were that they were to assess the cost and expenses which the School Board might prove to have been properly and necessarily incurred in acquiring another site equally suitable. In reversing the judgment of the court below, the Master of the Rolls states:

"The section of the private Act was substituted "for the provisions of The Land Clauses Act which "gave compensation *for the land taken.*"

(1) 3 T.L.R. 710.

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I know of no provisions which authorizes the application of the reinstatement doctrine to the ordinary cases of expropriation of lands as in this particular case consisting merely of isolated dwellings and the lands upon which they were situate.

At the threshold of the case, Mr. Mellish, K.C. with his usual ability, set forth his contention. He states it in this way. "In determining the values, "there is one point I may as well refer to at once, "and that is as to the basis upon which values in all "of these cases are to be assessed. Before Halifax "became in fact an Atlantic port for Canada, as we "were always hoping it would be, values were very low; "and when the policy of the government was announced "to extend the terminal facilities to Halifax, property "advanced, and advanced greatly in Halifax and "acquired a speculative value, and an actual value, "as far as prices are concerned—and I would contend "that the damages will be assessed on the basis of the "value of these properties when they were expro-"priated, that is when the expropriation plans were "filed,which was on the 13th February, 1913."

Mr. Mellish further states: "If the damages are not "assessed on that basis, the result is that everybody "else in town will have the benefit of the enhanced "value except the poor people whose land has been "taken."

He further adds: "That this claim involves taking "the water front all the way from Fairview along the "Arm for a long distance—it does not take the water "front but it goes through the lots lying along the "water front through the residential premises all "around there, and then comes the part near the "entrance to the Park, and strikes the water front and

"Halifax Harbour, and takes up practically all the "residential property on the Halifax side of the water "front, that is all the eastern side of Pleasant Street "from the Yacht Club right up to South Street and "beyond South Street taking all the residential por-"tion, and of course that scheme in itself has enhanced "the values."

This contention put forward by Mr. Mellish on behalf of his clients in an important one, and it seems to me is not well founded in law. I do not think the owners whose lands have been expropriated are entitled to any increase in value arising from the scheme. I have given the references to the law in the previous part of these reasons. Coming down to particular cases, I will deal first with that is called the business place, namely, the wharf property with the buildings situate thereon.

The business of Wilson is that of dealing in fish. According to his evidence, the largest part of his business is dealing in fresh fish. It is a business that has been in existence since the year 1878. The property consists of a certain quantity of land, and a certain amount of water filled in, upon which is situate the wharf with the various erections thereon. The land had a frontage of 216 feet, with a depth running out into the water of 300 feet. The grant of these water lots was prior to Confederation. The area of land, including that portion filled in, is 38,490 square feet. The area of land covered with water and not filled in is 26,310 square feet, as given by Mr. Clarke.

After the announcement of the proposed scheme of the Government, a Board was established, the members of which were Melvin S. Clarke, A. W. Stetson Rogers and J. C. Harris. The Chairman of the

Board was Colonel Weston, the Manager of the Eastern Trust Company, a gentleman of very large experience in connection with real estate in Halifax. The method of procedure adopted by this Board was that these three valuators would make separate and independent valuations of the different properties, and would then meet and agree upon a sum to be offered. To the sum agreed upon in this particular case of Wilson, would be added ten per cent. for compulsory surrender, and the amount agreed upon was the amount tendered. For the wharf property and the buildings erected thereon the sum of $60,000. was tendered. The defendants claim the sum of $360,000.

In referring to the evidence, it is usually referred to as if the entrance to the harbour, namely, out towards the Atlantic Ocean, were south from the lands in question, and the lands further up the harbour north. It would be probably more correct to state South East and North West, but it is immaterial. I merely mention the fact in order to make plain what is continuously referred to in the evidence.

The Wilson case is put forward in the evidence to say the least of it in a very loose manner. Without any qualifications Wilson purports to place upon the water lot and the wharf property a value of $1,000 a foot frontage, making in all the sum of $216,000 irrespective of buildings. He bases his claim upon certain facts which he states gives the property a very great value for the purposes of his business. He is asked the following question:

"Q. You say it is the best location for your business "on the harbour front? A. Yes.

"Q. Why? A. It is close to the harbour mouth. "It is nearest to the source of supply, and has a pure

"supply of sea water that you cannot get anywhere "else in the harbour front; and besides that it has "all the facilities for handling the fish business."

These reasons are purely imaginary. It is unquestionably near to the source of supply; but the distance between this property and the property in the centre of the town is not more than a quarter of a mile. With a motor boat, travelling at the rate of eight miles an hour, it would only be 1⅞ minutes distance away. His own witness Colwell from St. John, explains what is manifest, that it is an advantage to be near sea water, as the water used in the washing of fish should be pure, but he does not seem to think that ten minutes extra distance would be material.

Stillman, a witness called from Boston, places great stress upon having good water. All of this is correct, but in the case of Wilson, it is proved beyond any question that at the location we are now dealing with the water is not pure. This point can hardly be controverted in the face of the evidence of Johnson, the Assistant City Engineer, who shows that there is a sewer entering into the harbour 135 feet south from Wilson's premises, and a large sewer entering into the same harbour 700 feet further east; and this coupled with the evidence of Mr. Arthur C. Brown, with the exhibit that he produced, demonstrate to a certainty that one of the chief claims put forward, namely, the pure supply of sea water, does not exist. So that the two main grounds upon which Mr. Wilson relies, namely, the first point of call, and the pure water, are purely mythical. He is asked whether it was his intention to go out of business, and he replied as follows:

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"Q. You intend to continue your business if you "can? A. Yes, if I can get suitable premises.

"Q. You can get other premises? A. Yes, but not "nearly so suitable.

"Q. You can get them outside of the question of "pure water? A. Yes, It is a question of price largely."

When testifying in reference to his competency to speak, to give evidence as to values, referring to one of the houses, he is asked:

"Q. What would it cost to build the house? A. I "am not much of a builder. I have not had much "experience of that kind, but I have been advised by "competent men."

His estimate of $1,000 a foot frontage as the value of the water lot is purely guess work. There is not a tittle of evidence in support of such a claim.

In cross-examination he is asked:

"Q. You say its location, referring to the property "in question, is the best for two reasons; one is the "purity of the water, and the other because it is the "first point of call. These are the two main reasons "why you put a very special value on the property? "A. Yes."

He also shows that there are other fish merchants up the harbour. He shows that in addition to the Halifax property there are two other outside stations, one at Canso, and one at Hubbards. He is asked whether he has any arrangements with the fishermen to sell their output to him at these particular points, and he states:

"Yes, that they land their fish there and get paid "there."

Canso is about 120 miles, and Hubbards, about 35 miles from Halifax.

In support of the attempted valuation of $1,000 a foot frontage, one Adam B. Crosby is called. His evidence to my mind is absurd, if you take it without the explanation which he offered subsequently.

He is asked as follows:

"Q. I am assuming you have a good knowledge of "prices; what would you say would be a fair price? "A. I would say the price of that property in the "south end, because it seemed to me much better in "the south, it is developed; the properties there were "exceedingly better than they were north; in fact "the difference in the price of the properties on the "north and south was $500 a foot—the south pro- "perty being $1,500 a foot front, and the north $1,000 "a foot front.

"Q. I want your valuations of this particular pro- "perty? A. I would consider the property worth any- "where from $1,000 to $1,500 a foot, depending "upon the person who wanted it, and what they "wanted it for, and how badly they wanted it. If "they wanted that location they would have to pay "for it."

To place a value of $1,500 a foot upon the property in question, and the properties surrounding it towards the Atlantic, is contrary to all the evidence and to all the facts of the case.

He proceeds to qualify his statement in this way:

"Q. What would you say as to the advantages of "the location. A. For Mr. Wilson's business, I would "say there was no place in the City of Halifax that "could possibly give Mr. Wilson the advantages he "had in that place. No place in the port of Halifax, "I mean since the Government has taken over the "place south of him."

He seems to ignore the fact that not only have the Government taken the property south of Wilson's but they have also taken Wilson's property. I could understand if the Government had left Wilson his property, and begun the expropriation at the south border line of Wilson's property, and spent these enormous sums of money and made these expensive improvements, it might have given a higher value to Wilson's property, but unfortunately Wilson's property has been expropriated and it does not get the benefit, which Mr. Crosby would give to it.

Mr. Mellish, in cross-examination of Mr. Clark, puts it in this way:

"Q. Before this announcement in 1912, the southern "water front of the City of Halifax, that is the pro-"perty that was taken for some years did not have any "very large value? A. No.

"Q. That is correct, is it not, the shipping was done "further away? A. Yes. It was undeveloped.

"Q. And now with the exception of Wilson's there "was no extensive business enterprise of any sort "south of the Gas Works on that water front? A. "That is right."

The Gas Works property is to the north of Wilson's, further up the harbour.

This forms all the evidence on the part of the claimants, and it utterly fails to substantiate any such claim as has been put forward. The evidence of the Crown witnesses establish beyond question, to my mind, that the allowances made were intended to be full and ample. Mr. Clark in his evidence went minutely into the valuations of wharf properties in the City of Halifax. He pointed out that the water lot in question contains reefs, the removal of which

for wharf purposes for any large sized vessel would require an expenditure almost prohibitive. They have allowed for the land at fifty cents a square foot, and for the land covered with water thirty cents a square foot. They seem to have made this allowance to Wilson by reason of the fact that he was occupying the premises in question, and that to him carrying on his business it was worth this amount. The witness Rogers points out that the allowance of thirty cents a square foot, was made on account of the business being carried on. If there had been no business carried on ten cents a square foot would have been an ample allowance. Colonel Weston points out that all of these properties to the south were undeveloped properties. Harris points out that the additional allowance for the water front property was made on account of the business being carried on.

Mr. Clarke in his evidence admits that he allowed too little for the cold storage plant. His allowance was $2,500. It should be $4,000, an addition of $1,500. In addition to the sum allowed for the value of the premises to Wilson for the purposes of his business, I would add the sum of $5,000. There is no doubt there must be a certain dislocation of his business difficult of estimation. I would therefore add to the value of the wharf property the additional sum of $1,500 and $5,000 together with ten per cent., making the sum of $7,150, which added to the sum of $60,000 tendered would make the total for this property the sum of $67,150 and this amount I allow. I would refer to the case of *Pastoral Finance Ass. Ltd.* v. *The Minister*, decided by the Privy Council.(1)

There was considerable evidence in regard to the Levi Hart property about a third of a mile nearer the

(1) (1914) A.C. 1083.

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centre of the town, which has a depth of 700 feet. A valuable stone warehouse, which had cost originally a very large sum of money, was erected thereon. Wilson states that he had negotiations with Levi Hart for this property, and could purchase it for the sum of $60,000. It is much more valuable property than the one in question.

There was a great deal of other evidence given in detail by Mr. Clarke, of properties that could be purchased.

I am left in considerable doubt as to any loss of profits which Wilson may have suffered by reason of the expropriation. He has been for a considerable time landing his fish for the fresh market delivery at a wharf leased to him, apparently without any loss. A well established business of this nature would have a regular trade, and it is hardly likely that any of those bringing fish to the harbour of Halifax would pass over Wilson by reason of having to travel a quarter of a mile further in a motor boat. As to his curing the finnan haddies and obtaining pure sea water, the probabilities are that this part of his business would be carried on at the outlying places referred to, Canso and Hubbards. He would there get what seems to be a requisite for properly salted and cured fish, namely pure salt water.

Dealing with the various houses, the subject-matter of the expropriation, I have had the opportunity of visiting all of these houses. I may say that the photographs put in before me while showing the dimensions of the houses, cast a very happy gloss over their appearance, to the ordinary observer. The properties lying North East of Pleasant Street and between Pleasant Street and the water, are to

say the least a very poor class of residence, and in a very poor part of the town. That part of Pleasant Street in question in the various cases before me, would hardly be characterized as a good residential part of the City of Halifax. Mr. Clarke gives in detail his reason for the valuations of these different properties. There is no evidence to the contrary. The only house of any possible value is the one owned by Wilson. As I mentioned before, these gentlemen have approached the subject with the desire to reimburse the various land owners for any possible loss that they have suffered. Had they approached it from a legal standpoint of market value, and allowed upon that basis, the amount allowed to Wilson would not have been nearly as much. The Crown does not object to their method, but giving these replacement values instead of the market values, has put the owners in a much better position than what according to my view of the law they are entitled to. On the whole I think the amount offered for these household properties is ample, and I so adjudge.

The result is that $7,150 will be added to the sum of $83,250 tendered making in all the sum of $90,400. The defendants are entitled to interest on the sum of $67,150 to the date of judgment, as the sum tendered was insufficient for this property. No interest is allowed on the amounts tendered for the other properties, as I am of opinion the amounts tendered were ample. In adjusting the accounts, regard must be had to the amount advanced, also the rentals agreed to be paid for the occupation of the premises of Wilson after the expropriation. No doubt counsel can agree on these details.

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Reasons for Judgment.

I think no costs should be allowed to either party.

Judgment accordingly.

Solicitor for plaintiff: *T. F. Tobin.*

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