

BETWEEN:

1913
May 21.

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

AND

SAMUEL A. FERRIE, ALLAN D.
PICKEL, and JOSEPH A. FOLEY. DEFENDANTS.

Expropriation—Compensation—Market value—High rentals depending upon ephemeral conditions—Affidavits of values accompanying transfer—Admissibility.

In assessing compensation for lands taken for a public work, high rentals received from buildings in the neighborhood arising to a great extent from a general lack of such buildings in the community at the time of the expropriation does not afford a conclusive test of the real market value of the property.

2. Affidavits of values attached to transfers in the Registry Office are not admissible as establishing the facts sworn to in such affidavits, but are admissible for the purpose of confronting any witness before the Court who had made any of such affidavits.

THIS case arose upon an information exhibited by the Attorney-General of Canada, to have it declared that certain lands in the town of North Battleford, Sask., required for Dominion purposes, be vested in the Crown, and that compensation therefor should be ascertained.

The facts are stated in the reasons for judgment.

May 1st. 1913.

The case was heard at Battleford, Sask.

Donald Keith, for the plaintiff.

A. M. Panton, for the defendants.

CASSELS, J., now (May 21st, 1913) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, to have it declared that certain

lands in the town of North Battleford be vested in the Crown, and praying that the compensation therefor should be ascertained.

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Judgment:

The land in question consists of a lot situate on the north-east corner of King Street and First Avenue, in the town of North Battleford. The date of the expropriation, and the period at which the compensation has to be ascertained is the 16th July, 1912.

The lot has a frontage on King Street of 65 feet, with a depth running along First Avenue of 120 feet. It contains altogether 7,800 square feet. The Crown offered for this lot the sum of \$12,000. The defendants claim the sum of \$39,000.

Dealing with it as the witnesses have dealt with it on the King Street frontage, \$39,000 would mean \$600 a foot frontage, and the claim put forward by the defendants is for five dollars per square foot. In my judgment the price asked is greatly in excess of its real value. I think the value is greatly inflated. I am aware of the rule that should govern the fixing of values. No doubt the market price of lands taken ought to be the *prima facie* basis of valuation.

Let me describe North Battleford and its situation. At the time in question, the 16th July, 1912, it was a town containing a population of about 4,500 people. On the first of May of this present year the population having increased beyond 5,000, it became a city, under the provisions of the enactments in force in Saskatchewan. According to the evidence, at the present time, May, 1913, the population is in the neighbourhood of 6,000 souls. It is a city situate on the north side of the Saskatchewan River. It is one of the cities or towns situate on the Canadian Northern Railway between Winnipeg and Edmonton. North Battleford is situate 572 miles west of Winnipeg, and about 250

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miles east of Edmonton. At a place called Warman, situate about 65 miles east of North Battleford, two branches of the Canadian Northern Railway run, one to Saskatoon in the south, situate about 65 miles south of Warman, and another to Prince Albert to the North at a distance also of about 65 miles from Warman. There is no railway other than the Canadian Northern which comes near North Battleford. As I have stated, North Battleford is situate on the north side of the Saskatchewan river. It is apparently a city of seven years growth. The town of Old Battleford is situate immediately south of North Battleford on the other bank of the Saskatchewan River, and I should judge in a direct line the distance between the two would be in the neighbourhood of two or three miles. Within the last three years the Government of Saskatchewan have erected a fine court house in Old Battleford; and they have also erected a Registry Office in the same town. Old Battleford is situate near the junction of the Battle River with the Saskatchewan. North Battleford and Old Battleford have been united by a bridge spanning the Saskatchewan River. As if to make the union of these two places difficult, this bridge is placed a considerable distance east of North Battleford necessitating a drive from six to seven miles to reach Old Battleford from the centre of North Battleford. North Battleford has no water power.

At the present time, May, 1913, according to the evidence of Mr. Dixon, who is Secretary-Treasurer of the City of North Battleford, the manufactories in North Battleford consist of a grist mill, and a planing mill. There is also a sash and door factory, a brickyard and a machine shop. There is a considerable number of towns situate along the route of the Canadian Northern Railway between Winnipeg and North Battle-

ford. There is a fine agricultural country to the north, west and east of North Battleford, the crops depending to a great extent upon the climatic conditions, and the revenue to be derived therefrom depending upon the ripening of the crops free from damage or frost, and also upon transportation facilities. As Mr. Dixon says, the future of North Battleford depends practically upon the agricultural outlook.

The city has very fine cement sidewalks. Neither King and First Avenue, nor, I think, any other of the streets are macadamised, asphalted or paved with blocks up to the present time. Some of the streets are lighted in a manner that would do credit to Sparks Street in the City of Ottawa. The hotel accommodation of North Battleford is of a poor class. There are but few buildings of any moment in the city, most of them are small.

I am asked to fix a value of five dollars a square foot on vacant property, no doubt well situated. With the knowledge that I have of the values of properties in well settled cities, such as Halifax, St. John, Quebec, Montreal, Ottawa, Toronto, Winnipeg, Calgary and Vancouver, it would do violence to my common sense if I am compelled to allow any such price as is asked in this particular case. There is no doubt evidence of large prices paid for lands on King Street. For instance, Montague A. Wood swears to having purchased Lot 13 situate on the corner of King Street and First Avenue, immediately opposite the property in question, for the sum of \$36,000. This is a lot containing about 70 feet on King Street, with a depth of 85 feet on First Avenue, as against 65 feet on King Street and 120 feet on First Avenue, being the property in question.

According to the evidence of Joseph A. Foley, one of the defendants in this case, the property in question,

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namely, 65 feet on King Street with a depth of 120 feet, and including also the property on King Street immediately north of the property in question, marked on Plan Exhibit I, "Foley and Pickel," containing 35 feet frontage on King Street, was purchased in the spring of 1911 for the sum of \$7,500.

Plan Number I, is the plan referred to in the evidence, and indicates the various properties adverted to by the witnesses.

In August of 1911, the property in question was offered by the defendants to Mr. Mollard, Inspector of Public Works for the Dominion of Canada, for the sum of \$12,000. Between that period and the 16th July, 1912, there has been a large advance in the value of property.

In regard to the values of rentals received from one or two properties upon which buildings have been erected, I do not consider that evidence of much value. The large rentals received arise to a great extent from the absence of buildings in the City of North Battleford.

Certain copies of transfers from the Registry Office were produced by Mr. Keith, and the affidavits of values. I stated at the trial that I do not consider these as evidence with respect to the facts sworn to in the affidavits. They were admissible for the purpose of confronting any witness who had sworn to the affidavit.

I allow the defendants a sum which I consider extremely liberal, namely, twenty-four thousand dollars and interest from the 16th day of July, 1912, to the date of judgment, and their costs of action.

Judgment accordingly.

Solicitor for the plaintiff: *E. L. Newcombe.*

Solicitor for defendants: *A. M. Panton.*