

1896  
 Jan. 20.  
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THE QUEEN ON THE INFORMATION OF }  
 THE ATTORNEY-GENERAL FOR THE } PLAINTIFF;  
 DOMINION OF CANADA..... }

AND

JAMES A. CLARKE.....DEFENDANT.

*Expropriation for railway purposes—Owner left possession of buildings on expropriated property—Use and occupation—Profits—Interest—Compensation.*

Where the Crown had expropriated certain real property for the purposes of a railway, but had for a number of years left the owner in the use and occupation of several buildings thereon, two of which, an hotel and a store, were burned uninsured before action brought, compensation was allowed him for the value, at the time of the expropriation, of all the buildings, together with interest on the value of the hotel and store from the time they were so destroyed.

THIS was an information for the expropriation of certain property at Port Moody, B.C., required for the purposes of the Canadian Pacific Railway.

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

The case was heard at Vancouver, B.C., before the Judge of the Exchequer Court on the 16th and 17th days of September, 1895.

*B. H. T. Drake* for plaintiff;

*W. M. Gray* for defendant.

THE JUDGE OF THE EXCHEQUER COURT now (January 20th, 1896) delivered judgment.

The information is filed under *The Expropriation Act* in respect of certain lands at Port Moody, on Burrard's Inlet, in British Columbia, taken for the Canadian Pacific Railway. The title and interest of the defendant are admitted, and the only question in dispute is the

amount of compensation. The Crown offers the sum of \$149.07 for the land taken and for damages. The offer is based apparently upon an estimated value per acre of about eleven dollars; and no account has been taken of the prospective capabilities of the property from its situation and character, or of the fact that the whole water front of the property has been expropriated, or of other damages arising from the severance and the construction of the railway. These clearly are elements to be taken into account, so that apart altogether from the defendant's claim to be compensated for the value of a number of buildings that were on the property, when in 1885 the Crown's title was perfected, the offer is, I think, altogether insufficient.

The defendant estimates the compensation to which he is entitled at \$20,778.74. Of this sum \$4,000.00 is for a hotel and a store; and \$2,100.00 for seven small houses. The evidence as to the value of these buildings is all one way; the only question is as to the defendant's right to recover. The property had previously to the taking of any part of it been laid out in town lots, and the plan of the subdivision duly registered. For the fifteen lots, taken in whole or in part, in question in this case the defendant claims \$2,104.24; for 10.99 acres exclusive of such lots but including the whole water front, \$9,574.50; and for damages from severance, etc., \$3,000, making in all the sum of \$20,778.74 mentioned. The 10.99 acres referred to include portions of several streets shown on the plan or subdivision of the property; and for such portions of such streets the defendant is not entitled to compensation. (1) The interference, however, with such streets is a matter to be considered in assessing damages for the injurious affection of his property. Then with regard to the value that he puts upon the property, it is to be

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(1) *Paint v. The Queen*, 2 Ex. C. R. 154; 18 Can. S. C. R. 718.

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observed that Port Moody was never a town except on paper, and that such values are based upon sales made at a time when it was thought, and because it was thought, that it was to be the western terminus of the Canadian Pacific Railway. Apart from the view or belief that the terminus was to be there the property never had any such value. Now, if the railway had stopped at Port Moody instead of being carried on to Vancouver, the advantages accruing to the defendant's property there would have had to be taken into account in assessing compensation for land taken and for damages (1); and the value of such advantages deducted from the compensation to which the defendant would otherwise be entitled. Such an advantage being an element to be taken into account in the reduction of damages in the case mentioned ought not, it is clear, to be included as an element in estimating the value of property under the circumstances of this case. The speculative values that town lots at Port Moody had, while it was thought it was to be the terminus of the railway, disappeared as soon as it was known that the railway was to be continued to Vancouver. In 1878 or 1879 there were some sales at fifty dollars a lot; but I have no doubt that in that value to a greater or less degree the element of the prospective terminus entered. Part of that sum, probably, and certainly everything beyond it, represented the value of lots in a town that was to be the terminus of the railway.

In 1877, Mr. Cambie, the resident engineer in charge of the work, entered on the lands in question in this case, and set up a stake, and instructed the engineers under him to survey a line from that point easterly to Yale. On the 6th of September, 1882, a plan was filed

(1) The Government Railways and Paint v. The Queen, 2 Ex. Act, 1881, s. 16; R. S. C. c. 40, C. R. 149, and Can. 18, S. C. R. 15; 50-51 Vict. c. 16, s. 31; 718.

in the proper registry office, on which was shown in a general way the portion of the defendant's land that the Crown proposed to take for the railway. But the proceedings did not comply with the statute then in force (*The Government Railways Act*, 1881, section ten) inasmuch as no description of the lands was deposited in the registry; and with the exception possibly of the actual right of way, there was no such taking possession of the lands expropriated as would give the Crown title under the eighteenth section of the Act—assuming that section to be applicable to the case. In July, 1885, the Crown made good its title by filing in the registry office a plan and description in accordance with the statute. This question of when the Crown acquired title has no material bearing on the matter of compensation, except with reference to the buildings I have mentioned, which were put up between the years 1882 and 1885. As to the general question of values, apart from such as resulted from the belief that Port Moody was to be the terminus, there was no advance between the years 1882 and 1885. But if the Crown acquired title in 1882 this part of the defendant's claim fails. If, on the contrary, the Crown did not acquire title to the portion of the land on which the buildings were put up, until July, 1885, and I think it did not, then he should succeed. There is another incident in connection with these buildings which has not only a bearing on the question of title so far as that might be thought to depend on possession, but also upon the question of interest. The defendant was left in possession of the buildings after July, 1885. The hotel and store were burned, uninsured, in July, 1888; but until that time he was in receipt of the rents from both buildings, and, at the time of the trial he was still in possession of the other buildings. I think the defendant is entitled to the value of these buildings, and that

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he should have interest on the value of the hotel and store since July, 1888. As to the other buildings, no interest should be allowed, without taking the rents into account, and the evidence is not clear and satisfactory enough to permit of that being done. The simplest way will be to allow the rents to go against the interest.

For the land taken (not including the buildings) and for all damages, I allow the defendant \$2,500; for the hotel and store, \$4,000; and for the seven other buildings, \$2,100. To the sum of \$2,500 will be added interest for ten years and a half, and to the sum of \$4,000, seven and one half years' interest. The defendant will have his costs.

*Judgment accordingly.*

Solicitor for the plaintiff: *H. B. W. Aikman.*

Solicitors for the defendant: *Drake, Jackson & Helmcken.*