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

AND

THOMAS THOMPSON, DEFENDANT.

1916
Feb. 21.

Expropriation—Compensation—Farm — Value — Mill—Timber—Conversion.

In estimating the amount of compensation for the expropriation of a farm by the Crown for the purposes of a military training camp, the property is to be valued, not by segregating the acreage in severalty, so much for the timber and other things thereon, but by the prices paid for similar properties when acquired for similar purposes, and its value accordingly at the time of expropriation. The owner, however, will not be allowed compensation for a mill erected and operated upon the land after the expropriation, and he is answerable to the Crown, in conversion, for all timber cut and removed by him after that time.

INFORMATION for the vesting of land and compensation therefor in an expropriation by the Crown.

Tried before the Honourable Mr. Justice Audette, at Quebec, February 16, 17, 18, 19, 1916.

G. G. Stuart, K.C., and *Ernest Taschereau,* for plaintiff.

L. A. Cannon, K.C., for defendant.

AUDETTE, J. (February 21, 1916) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia,* that certain lands and real property belonging to the

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defendant were taken and expropriated, by the Crown, under the provisions of the *Expropriation Act,* for the purposes of "The Valcartier Training Camp," a public work of Canada, by depositing, on September 15th, 1913, a plan and description of such lands in the office of the Registrar of Deeds for the County or Registration Division where the same are situated.

While the property was expropriated in September, 1913, the defendant was allowed to remain in possession after that date for about one year, as will be hereafter mentioned.

The lands expropriated are taken from lots 1 and 2, in the first concession of St. Gabriel of Valcartier, containing altogether 264 acres,—from which should be deducted ten arpents as representing the portion mentioned in paragraph 3 of the information,—leaving about two hundred and fifty-five and ninety-five hundredths acres.

The Crown, by the information, offers the sum of $4,200, and the defendant claims the sum of $14,420.84.

On behalf of the defendant, witnesses William McCartney, Jos. Savard and Samuel Clark valued the defendant's property as of November 2nd, 1915, at $7,911, excepting the value of the buildings.

Witness McCartney, to arrive at such a valuation, proceeds by segregating the acreage in severalty, allowing so much for so many acres, and so much for others and so on. Having gone so far and valued the soil, he proceeds by placing a value upon the timber upon the land, and estimates there are so many trees on the land which would yield so many feet of board measure at so much per thousand feet. Adding further, that after having valued the soil,

and the value of the timber reduced to board measure, he valued the balance of the wood as cordwood, at so much a cord. He admits, however, in answer to the Court, that although he bought farms, he never valued or bought them in that way,—but that he bought the farm as a whole, *en bloc.* In 1906 he bought one of the good farms at Valcartier, with good buildings, for the sum of $2,000. This farm was composed of 180 arpents, together with 90 arpents of a bush lot.

Witness Savard values the land in the same manner as the previous witness. He says there is a difference in the value of properties in 1913 as compared with 1915,—and that the mill being upon the property gives it a high value, and that the valuation is high because of this mill. He declares he *cannot say what was the value of the farm in 1913.*

Witness Clark gave the same evidence as the previous two witnesses—it being admitted by the parties he will give the same evidence as McCartney and Savard. He takes into consideration the existence of the mill there in his valuation, and he declines to make a valuation without the mill. He placed a value upon the lumber in the woods; but had no experience in doing so—it was the first time he had ever done it.

Besides the evidence of these three witnesses upon the value of the farm, there is also in this case evidence upon the value of each of the buildings and also upon the value of the agricultural implements, the furniture and other goods and merchandise. The two witnesses who testify with respect to the latter—as shown in Exhibit "L", admit having no knowledge of the value of such articles,—but as they

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were told the value of the same was so much, they valued accordingly. A very unreliable class of evidence.

The defendant also claims the sum of $300 as damages to his crop in 1914.

There is further the evidence of the defendant himself, who testifies that he decided during July, 1913, to put up a sawmill upon his property. On July 26th, 1913, he purchased the machinery and necessary supplies for the mill, as appears by Exhibits "G" and "H", amounting in all to the sum of $1,626.84. These goods and merchandise were shipped from Quebec on September 15th, 1913, and the defendant says he received them at Valcartier on or about September 17th, 1913, when he began hauling this machinery from the station. He began cutting lumber on lots 1 and 2 by the end of July or beginning of August, 1913, and Charles Savard, who owned a mill at about a mile and a quarter from Thompson's property, was sawing the logs for the latter for the purposes of his mill, and made the first delivery of them on September 30th, 1913, and the last one on October 23rd, 1913. The cost of cutting the timber amounted to $10.31, and the value of the lumber was $84.72. The defendant began operating the mill some time in November, 1913. He ran the mill for about 6 months. After his farm had been expropriated he cut a quantity of timber upon the property, and after sawing it, sold some of it to E. T. Nesbitt, a lumber merchant at Quebec, to the amount of $1,846.70, and also to farmers for an additional sum of $75 to $100.

Messrs. Bate & McMahon had the contract for the building of the rifle range at the Camp, and Mr. Lowe was their manager. In the latter part of

August, 1914, Lowe rented the mill from Thompson, at $10 a day, running it at his own expense and paying wages to Thompson. The latter says he worked for 11 days for Lowe, but was paid only for 10, receiving nothing for August 31st, 1914, the last day he worked for Lowe. After that date the defendant says he stayed around for a few days, and left on September 17th, 1914, leaving on the property whatever he had in the way of furniture, agricultural implements, etc., which did not, however, amount to much, he being a single man with no family.

On behalf of the Crown, *Captain Arthur McBain* testified that on September 17th, 1913, accompanied by Thomas J. Billing, he called on the defendant Thompson, and after asking him what he was going to do with the mill, he told him (Thompson) that it was not advisable to build the mill. The witness further notified the defendant on that occasion,—on September 17th, 1913,—that the plans of expropriation taking his property had been filed. The witness valued this property in September, 1913, at the sum of $1,000, stating that the buildings were old, that they had to repair the barn before using it. He testified that the farm was covered with moss and with a small second growth of scrubs of no value, indicating poor land.

Colonel William McBain, valuing this property, testifies that he does not think it was possible, in September, 1913, to find a purchaser for the defendant's property for any sum over $1,500. He says that Hopper Ireland, who owned the farm before Thompson's father, was unable to make a living upon it and had to leave it about 20 years ago. About 40 acres of this farm had been cultivated at one time. The farm was in a very bad condition, with

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very old and inferior buildings. The soil is a black sand, even worse than red sand; and the second growth of small trees or scrubs is the result of the condition of the ground being left uncultivated, and are absolutely of no value. The timber upon the property is very inferior, such timber consisting of very small spruce, and some hardwood. Colonel McBain, who had charge of the camp and of all these expropriations, states he did not get the mill valued, because his brother, Captain McBain, on September 17th, 1913, had warned the defendant not to put up the mill on the Crown's property. This witness also produced, as Exhibit No. 6, a list of 31 properties purchased by him, at Valcartier, for the purposes of the camp, at an average price of $16.57 to $17 per acre, for much better properties than that of the defendant. The prices then paid afford the best test and the safest starting point for the present enquiry into the market price of the present property. *Dodge v. The King*,[1] *Fitzpatrick v. Town of New Liskeard*.[2] The witness further testified that in August, 1914, he discussed the question of the mill with the defendant, and Thompson asked him if he would make him an offer of $5,000, leaving everything there. However, the witness declined to do so.

The defence also produced, as Exhibits Nos. 2 and 3, what appeared in two local papers published at Quebec, on September 16th, 1913, in the English language, being two articles, under large caption lines, announcing the expropriation of these lands, at Valcartier, for the purposes of the camp.

Now, under the provisions of sec. 8 of the *Expropriation Act*, the defendant's property became

[1] 38 Can. S.C.R. 149.
[2] 13 O.W.R. 806.

vested in the Crown on September 15th, 1913, and under sec. 22, of the same Act, any claim the defendant had from the date of the expropriation upon the land so expropriated was converted into a claim to the compensation money, and his claim in respect to his land or property became void. Then, under sec. 47, of the *Exchequer Court Act*, the compensation to which the defendant became entitled as a result of the expropriation must be ascertained as of the date of such expropriation. Therefore, all the evidence adduced by the defendant with respect to the amount of the compensation he is entitled to is absolutely beyond the mark and of no legal effect; because he has not a tittle of evidence as to the value of the property in 1913, at the time it was expropriated. The witnesses for the defence stated clearly they were placing a value upon the property as of November, 1913.

It will be easily realized that the value in 1913,—before there was any question of the camp, and the value in 1915, after the camp had been there with over 30,000 men, is very different. It is unnecessary to discuss this question, which is too obvious.

The evidence with respect to the value is therefore to be found only in the evidence adduced by the Crown, where one witness values the property, as a whole, at the sum of $1,000; and another witness at the sum of $1,500.

The defendant's evidence as to the value of the property ascertained as of 1915, instead of 1913, has even been adduced upon a wrong basis,—upon a wrong principle. It is, indeed, beyond any sane conception of common sense and business acumen to imagine that the market value of this property could be ascertained in a rational and equitable manner,

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by first valuing a soil of this kind, by segregating the acreage, and placing a value in severalty upon the same, and then after having done so, to turn around and value the timber and the cordwood upon the same at so much per 1,000 feet board measure, and the cordwood at so much a cord, respectively. In the result, by following this manner of valuation with respect to the timber, it would mean that a lumber merchant buying timber limits would have to pay to the vendor of the limits, as the value thereof, the value of the land, together with all the foreseen profits the purchaser could realize out of the timber on the limits; thus leaving to the purchaser all the labour and giving all his prospective profits to the vendor of the limits. Stating the proposition is solving it. No sane person would purchase under these circumstances.

Coming now to the question of the mill. It is established beyond peradventure that on September 15th, 1913, there was no mill upon the property and that compensation for the mill as a mill cannot be allowed. However, at that date the defendant had purchased the machinery and some supplies for the purpose of erecting a mill upon the property,—and although duly warned on September 17th, 1913, not to do so, on account of expropriation—and in face of the expropriation which was then common talk in the locality—the defendant chose, at his risk and peril to put up the mill, which was only completed sometime about the beginning of November, 1913, and operated it from that date for about 6 months, as hereinbefore mentioned. By remaining upon the property and thus erecting that mill, the defendant assumed the responsibility of such a course and its consequences—thus waiving in advance any right

to complain. *Chambers v. London, Chatham & Dover Railway Co.*[1] The defendant did more. He started cutting timber upon lots 1 and 2 for the purposes of his mill, and sold sawn lumber for an amount of between about $1,800 to $1,900. This wood was cut in trespass and converted to his own use. For this conversion he must account to the Crown for at least a part of the same; because the Crown is entitled to damages for the conversion of such timber cut upon its property after September 15th, 1913.

There is no doubt that the defendant is entitled to damages with respect to this mill, or, rather, the machinery of the mill. But these damages must be ascertained as of the date of the expropriation. True, the defendant was at that date under no compulsion to sell to the Crown, and the Crown under no compulsion to purchase this machinery; but the Crown had to indemnify him for all damages suffered by him in that respect. Were the Crown saying, "I will pay you the full amount of this machinery and supplies as you had them, that is new, on September 15th, 1913,"—the defendant could only deliver second-hand machinery and supplies, because they have been in use for quite a while.

This farm was purchased by the defendant's father on April 4th, 1900, for the sum of $700 mentioned in the deed, of which $200 only was paid on account. The father resold to his son on October 10th, 1900, for the $500 remaining unpaid. A railway goes through this farm, severing it into two pieces. The defendant, who was a train hand on the C. N. R. up to the spring of 1913, only started to live on that farm from that date, when he did some little ploughing, for about 14 to 15 acres, he says.

[1] (1863) 8 L.T. 235, 11 W.R. 479.

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This farm is much below the average farms in Valcartier. The soil is black sand, and had not been cultivated or ploughed for about 20 years up to 1912, when the defendant did but a little work upon it. He even said he did not figure upon this property as a farm.

The Crown, by counsel at trial, declared that the defendant could remove and retain as his property both the mill and the machinery in it.

Were the claim for loss of trade allowable, it is quite obvious, it could not be allowed in this case, because the mill was erected and began to be operated after the expropriation, and there was no trade established in September, 1913.

The claim of $900 for the second growth of scrubby shrubs, which is the result of the farm remaining so long uncultivated, is very characteristic of the case, and was attempted to be proved by very flippant evidence, which it is best to leave without further comment.

Were the highest amount of valuation allowed for this farm, ascertained upon proper basis, at the date of the expropriation, namely, at the sum of $1,500.00

The sum of..... 84.00
allowed as the value of the timber for his mill;

The sum of..... 53.00
for the slabs left upon the ground;

The full value of the machinery and supplies, as new..... 1,626.84

And the further sum of..... 250.00
for all damages to oats, potatoes, furniture in 1914,—although it is quite impossible to determine what is really re-

ferable to the grace and bounty of the Crown, by allowing him to remain on the property up to September, 1914, and what may well constitute a legal right to compensation:—we would arrive at a total of.....$3,513.84

However, from this total amount should be deducted a certain sum for the lumber cut after the date of the expropriation, the conversion of which enabled him to sell for about $1,800 to $1,900 of the same after passing it through the mill. A further sum should also be deducted from the total amount of the machinery and supplies, because he could not deliver the same in the state in which it was in September, 1913—but only as second-hand machinery; and, further, because with the offer of the plaintiff of the sum of $4,200 the Crown allows the defendant to remove the machinery and the mill, and retain the ownership of the same. The Crown did not take his furniture and his agricultural implements.

Under the circumstances, I find that the sum of $4,200 offered by the information, is much over and above the amount the defendant is entitled to recover, the compensation being established on a very liberal basis.

Therefore, there will be judgment as follows:

1st. The lands expropriated herein are declared vested in the Crown, from September 15th, 1913.

2nd. The compensation for the lands taken and for all damages resulting from the said expropriation is hereby fixed at the sum of $4,200 without interest.

3rd. The defendant is entitled to be paid the said sum of $4,200 without interest, upon giving to the

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Crown a good and sufficient title, free from all mortgages or encumbrances whatsoever upon the said property. And it is further declared that the defendant is entitled to remove and retain as his property both the mill and the machinery in the same.

4th. The costs will follow the event.

Judgment accordingly.

Solicitor for plaintiff: *Ernest Taschereau.*

Solicitors for defendant: *Taschereau, Roy, Cannon & Co.*