

BETWEEN

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

1907
April 27.

AND

JOHN A. THOMPSON.....DEFENDANT.

Expropriation—Foundry—Depreciation in value of machinery and tools by reason of expropriation—Compensation.

Where a building used as a foundry is expropriated for the purpose of a public work, the owner who is unable to find suitable premises elsewhere to carry on his business is entitled to compensation for the depreciation in value of the machinery, tools and other personal property with which his foundry is fitted up.

THIS was an information for the expropriation of lands for the purposes of the Intercolonial Railway of Canada. The facts are stated in the reasons for judgment.

January 25th, 1907.

R. T. MacIlreith and C. F. Tremaine, for plaintiff;

W. B. A. Ritchie, K.C. and J. A. McKinnon, for defendant.

THE JUDGE OF THE EXCHEQUER COURT now (April 27th, 1907) delivered judgment.

Certain lands and premises situated on Water street, in the City of Halifax, described in the information herein, and of which the defendant was owner, were taken by the Crown for the purposes of the Intercolonial Railway. At the time of the taking the defendant occupied and used these premises as a foundry. For the purpose to which he put the property it was worth to him, he says, \$5,000, and Mr. Duggan, one of the Govern-

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ment valuator, agrees with that view. Apart from this particular use of the property by the defendant, its value was, it appears, about \$3,500.

The defendant also claims \$5,000 for loss of business. Being dispossessed and turned out of his property he was not able, or did not find it convenient, to re-establish himself elsewhere. He has since been employed as foreman in another foundry. Of course no man cares to lose his own business and work for others in the same business, and it is a hardship to be compelled to do so. But in this case there has been no pecuniary loss. The defendant says that including about \$140 a year received for rents for a part of the property, and not counting his own labour, he made out of the business which he did on these premises \$900 or \$1,000 a year. That gave him for his superintendence of his business and for his labour about \$750 or \$850 a year; and his services as foreman are really worth more than that. So that there is in that aspect of the case no pecuniary loss, and there is no reason on that account to come to the conclusion that the lands and premises, used as a foundry, were worth to him when taken more than the sum at which he and Mr. Duggan agreed in estimating it.

The defendant also claims a sum of \$5,000 for loss on certain machines, tools and other articles with which his foundry was fitted up. An inventory and appraisalment of these things is in evidence in which their value is put at \$5,488.70. At auction they realized \$361.50. Such a loss as this is, I think, when inevitable, an element to be taken into account in determining the value of the lands and premises taken; and the amount of the compensation to which a defendant is entitled. If in such a case as this it is inevitable that a defendant upon being dispossessed must make a loss on the personal property with which his foundry is fitted up, then the property taken is worth more to him than its actual or market

value; more than it would be worth in the hands of one who would not on dispossession be compelled to make such a loss. In this case however the great disparity between the appraised value of the articles mentioned and what they realized is not, I think, satisfactorily explained. If the values are as stated a prudent sale or disposition of the property ought to have realized more. I have great difficulty in coming to the conclusion that so great a loss was necessary or inevitable. The Crown officers do not appear to have had any notice of the sale or that any such claim would be put forward.

On the whole case I think that a sum of \$5,500 will represent a just and sufficient compensation to the defendant, including the compulsory taking and other elements of damage that ought to be taken into consideration.

There will be a declaration :—

1. That the lands and premises described in the information are vested in His Majesty ;
2. That the defendant, upon procuring and giving to the Crown good and sufficient discharges or releases from any person or persons having any claim upon such compensation money, is entitled to be paid as compensation for the lands and premises taken and for all damages arising from such taking, the sum of \$5,500, with interest thereon from the 26th day of January, 1906.
3. That the defendant is entitled to his costs.

Judgment accordingly.

Solicitor for plaintiff, *R. T. MacIlreith.*

Solicitor for defendant : *J. A. McKinnon.*

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