BETWEEN:

1916
May 6.

HIS MAJESTY THE KING, on the information of the Attorney-General for the Dominion of Canada,

PLAINTIFF;

AND

JOHN G. HEARN, JOSEPH A. COLLIER, OSCAR Roy, all of the City of Quebec, in their quality of Executors and Trustees under the last will of the late Honourable John Hearn, THE QUEBEC HARBOUR COMMISSIONERS and THE CITY OF QUEBEC,

DEFENDANTS;

Expropriation—Assessment—Water lots—Wharves—Prospective value—Market value—Harbour Commissioners' Line—Sheriff's sale—62-63 Vic. Ch. 34, sub-sec. 2 of sec 6.—Possession—Prescription—Power to sell—Want of registration—Deed—Interpretation.

Compensation for land taken should not exceed the amount which legitimate competition among purchasers would reasonably force the price up to; nor should it regard the enhanced value of the land arising from the public work or undertaking for which the expropriation is made.

2. The element of potential value or prospective capability is a constituent of the market price of the property.

3. Under the Quebec Harbour Commissioners' Act, (1899) (62-63 Vict. Ch. 34, sub-sec. 2, sec 6) the rights of the wharf owners are protected and excluded from the Harbour of Quebec, and therefore do not belong to the Harbour Commissioners. While these wharves may be built below low-water mark without a grant, and the owners could not be ordered to remove them. *Secus* as against a trespasser.

4. The owners of such wharves have the right to maintain the same and to use them, and under the earlier Act of 1858 that right cannot be interfered with without compensation.

5. The ownership of a parcel of land below low-water cannot be claimed as resulting from a possession consisting in the mooring of boats at the adjoining wharf,—the bottom of such boats resting on the water above the bed

or by pulling these boats ashore and unloading thereon or on the wharf, cargoes of wood picked up in the current in the open, or cargoes brought in by schooners or otherwise—because such possession cannot be construed to have been *animo habendi, possidendi, et appropriandi.*

6. The Quebec Harbour Commissioners on the 10th June, 1864, had the power to sell as well what they held at that time; as well as what they acquired subsequently.

7. Where property yields practically no revenue and is not occupied, no allowance for compulsory taking should be allowed.

8. Under the Code of Procedure of the Province of Quebec, a deed from the Sheriff of immoveable property after seizure and sale only conveys the rights and titles of the judgment-debtor; and if through clerical error or otherwise, the deed purports to convey more land than the judgment-debtor had at the time of the sale, the title to such additional land does not pass by the deed,—the sale being made *super non domino et non possidente.* (*The King v. Ross*, 15 Ex. C.R. 38 followed).

9. The want or registration of the deed of sale by the Harbour Commissioners to the defendant in an expropriation case where the interest of all parties have to be determined, cannot be set up by the Crown,—the Harbour Commissioners' grantor,—as against the defendant, their legal grantee. The question of registration of such deed would have to be taken into consideration in a case where the question of priority had to be determined.

10. The expression in a deed of sale of some water front property in the Harbour of Quebec in the following words, "extending in depth to *low water line*, bounded in front towards the north by Champlain Street, *in rear "by the Commissioners' line,"*—held to mean the Commissioners' northern property, and not the southern line, which would take in all of the Harbour Commissioners' property immediately opposite.

THIS was an information filed by the Attorney-General for the Dominion of Canada for the expropriation of certain lands required for the construction of the National Transcontinental Railway, a public work of Canada.

The facts are stated in the reasons for judgment.

November 30th, December 11th, 13th, 14th, 15th, 16th and 17th, 1915.

The case was heard at Quebec, before the HONOURABLE MR. JUSTICE AUDETTE.

G. F. Gibsone, K.C. and *A. C. Dobell* appeared for the plaintiff; *G. G. Stuart,* K.C. for the general defendants; and *J. E. Chapleau* for the City of Quebec, added defendant.

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MR. *Stuart:* Two principal questions arise with respect to our title; how far has the defendants proved a title to the land the Crown has taken, and for which it declares its willingness to pay,— and how far have the Harbour Commissioners controverted that title or shown a good title to what the defendants claim?

The first consideration in view of the attack of the Crown, is to know what are the powers of the Harbour Commissioners, and to know how far the titles from them to the defendants are good. There is no demand to have any of these deeds in favour of the defendants set aside, but there is a third person, the Dominion Crown, stepping in between two other contracting parties, to say: I do not claim the property, but the deeds, by which you, the vendor, have conveyed it to the purchasers are void.

Practically the only statue of importance in determining the rights and powers of the Harbour Commissioners, is 22 Vict. cap. 32. A great many of the statutes are contained in the supplementary volumes of the *Revised Statutes of Canada*, 1886. This statute will be found at page 27 of this supplementary volume; 36 vict. cap. 62 at page 812; and 38 Vict. Cap. 65 at page 858. The Acts were consolidated in 62 and 63 Vict. Cap. 34.

Now the only matter of importance arising between the consolidations and the original Act is that somewhere, either in 1873 or later, a provision was introduced that the Harbour Commissioners would require the sanction of an order-in-council to any sales which they made. Prior to that date, there was no such provision, and all of the defendants titles are anterior to any such provision existing.

The Act (22 Vict. Cap. 32), is an act to provide for the improvement and management of the Harbour of

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Quebec. The recital to that acts says:—"Whereas it is expedient to provide for the improvement and management of the Harbour of Quebec, therefore, by and with the advice and consent of the Legislative Council in the Assembly of Canada enacts: Section 1 defines the limits of the harbours and section 2 vests the harbour in the Commissioners, the land."

[BY THE COURT: This came up in the other case, the *Ross* case.] (1)

Quite so, since that there has been a unanimous decision of the Court of Appeal with regard to the powers of The Harbour Commissioners. The court held for the purposes of the Act, which is specific, that they could borrow money to improve the harbour of Quebec.

[BY THE COURT: The Harbour Commissioners are appointed by The Crown.]

Not all, some are elected. Some are appointed by the Crown, some are elected by the shipping people, and some by the Board of Trade. It is a composite body.

The words of the Statute are, "it is vested in the "Corporation, hereinafter in trust for the purposes "of the Act." The purposes of the Act are the improvement and management of The Harbour of Quebec;—and the constitution of the Corporation as originally made, is this:—"It shall be lawful "for the Governor, by an instrument under the "great seal of this Province, to constitute and appoint "three persons, to be, together with the Mayor "of the City of Quebec, for the time being, and the "President of the Quebec Board of Trade for the "time being, Commissioners for the improvement "and management of the Harbour of Quebec, etc."

(1) 15 Ex. C.R. 33

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Then there is a proviso that no Commissioner shall be interested. So that the scheme of the Act is an incorporation for the purpose of improving and managing the harbour. The Commissioners have power to purchase, hold and sell movable and immovable property as often as they deem fit, and they have certain other powers not necessary here to discuss.

We have got an authoritative and conclusive decision by the Court of Appeal in the case of *The Montreal Harbour Commissioners, v. The Record Foundry and Machine Company*(1). It is not reported in the Court of Appeal, but it was confirmed unanimously.

[BY THE COURT: What did they hold there?]

They held that such bodies have all the powers necessary to attain the object of their existence.

[BY THE COURT: Would you contend that the Harbour Commissioners have such powers as are not subject to the jus publicum?]

I say they are private persons, as far as the right to deal with them, so far as prescription is involved.

[BY THE COURT: But here they are in possession of the foreshore on a navigable river. Are they in a better position than the Crown, than the King acting in trust for the nation, would be in?]

They are in a far worse position. I cannot prescribe against the Crown, but I can against them. They can do anything which the statute authorizes them to do, just exactly as the Crown could do. The statute authorizes them to do what was necessary for the improvement of the Harbour of Quebec, and for that purpose to sell and dispose of the land in the Harbour.

(1) Q.R. 38 S.C. 161.

The question has come up over and over again in England where certain trusts have been constituted like the Mersey Board and various Harbour Boards for the improvement of property. They have been held to be private corporations, not representing the Crown, but corporations created for a special purpose as every corporation is by the terms of the statutes, yet, in no respect representing the Crown.

Whenever a portion of the public domain is demised to them in trust, they hold it independently, hence they have the power to alienate it.

In the case of *The Quebec Harbour Commissioners v. Roche*, (1) it was held: "The Quebec Harbour "Commissioners are a body corporate distinct from "the Crown and cannot claim the privileges of the "latter in respect to the limitation of actions for "ground rents and dues, vested in them in trust "on immovables originally granted by the Crown."

The corporation owns certain properties, has certain revenues, which are to be applied and used for the purposes of the statute. It stands absolutely in the same position as a private corporation. It is bound by the terms of its statute—any person dealing with it is dealing with a private corporation.

A judicial proceeding under our system is binding upon the person who makes it, unless it be alleged and shown to be made in error, and if it was followed by a judgment as it was in this case, then it is a presumption *de jure*, binding upon all the parties, and specifically binding upon those who made the declaration. (2)

But in addition to the sheriff's title, we claim by prescription at thirty years and ten years.

(1) Q.R. 1 S.C. 365.

(2) See Article 1241 C.C.L.C.

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[BY THE COURT: You claim the part covered by the wharf?]

Yes there cannot be any question about that.

Now as to the land between high and low water.

I submit we have shown such possession as puts that particular kind of property, exclusively in our hands.

Now I would refer your Lordship to a very curious case which arose with respect to the right of fishing in Loch Neigh in Ireland. It is the case of *Johnston v. O'Neil*,(1) and one of the most curious things in connection with it is that there was a lease for 5,000 years. The importance of the case is on how little basis the possession was held to be established in that case.

Not being navigable waters, the fishing was never public. Here we have the case of one man claiming the sole right of fishing in this enormous body of water, practically by possession.

The sales by the Harbour Commissioners are absolutely in the same terms, subject to a rent constituting a capital which is payable at the will of the grantee or purchaser.

We come to lot 2381, and there again we claim right down to the Harbour Commissioners line, and I don't think, that the Harbour Commissioners in their defence, have laid claim to any part of that lot—whether they have or not the sheriff's sale was on the 26th of August, 1892.

We need very little to rely on prescription so far as this lot is concerned, and so far as the other lots go, we claim by prescription. We claim in most instances down to the line of the wharf, and there can be no question there whatever as to our possession.

(1) L.R. (1911); A.C. 552.

There is the case of *Patton v. Morin.* (1) It is a judment of the Court of Appeal. The Judges of the Court of Appeal, there expressly state the law of the Province of Quebec. The rights of every person who does not make opposition are extinguished providing the person is met by a person apparently in possession as owner. The only exception is where the immovable is *super non domino.*

The case of *Patton v. Morin* was followed in the Court of Appeal, by the case of *LeClerc v. Phillips,* (2) and it was approved in the Supreme Court of Canada in the case of *MacGregor v. Canada Investment Company.*(3)

For these reasons, I submit that we have made out an absolute title to everything we have claimed. In most instances the title from the owner, in a great many instances a judicial title, and if there be a possibility of those titles being defective, and I see no reason whatever why they should be as any defect has been cured by a prescription of thirty years which operates practically with respect to all of them, and certainly by a prescription of ten years, for any that are not covered by the thirty years.

He cites Art. 1010 C.C.L.C.

Mr. *Gibsone* —The two subjects in controversy and upon which the Court will have to pass, are, first, as to the extent of the defendant's title; and, secondly, as to the compensation which they should receive for whatever their rights prove to be.

Ellis, the defendant's predecessor in title, went to the Quebec Harbour Commission and asked for a deed of the beach lot from high water mark to low water mark—the very land he bought from Jamieson, he buys again from the Harbour Commissioners.

(1) 16 L. C. R. 267. (2) Q. R. 4., Q. B., 288.
(3) 21 S.C.R., p. 511.

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It is recited in the deed: "And, whereas, the vendors "of the aforesaid two lots of ground could have and "had no right of property beyond the high water "mark, since the beach lot commencing from high "water mark to low water mark was the property "of the Government to whose rights the Quebec "Harbour Commissioners have succedeed by virtue "of an act of the Legislature of the Province of Canada, "passed in the 22nd year of Her present Majesty's "Reign, Chap. 32 &c."

The Quebec Harbour Commissioners conveyed to Ellis the beach lot in front of the Jamieson and Turner lot, at the extreme easterly end of lot 2376 on the terms mentioned therein, and they more especially say that the exact extent of the beach thus conveyed from the Harbour Commissioners to Ellis is set out on the plan prepared by Mr. Baillargeau annexed to the deed.

I produced a copy of the plan annexed to the deed, and you will there see that what Ellis bought from the Harbour Commissioners was from high-water mark to low-water mark, and that his wharf extends considerable beyond the low-water mark.

The argument which I draw from this, and the fact I consider established by us, is so far as this east section is concerned, that all that Mr. Ellis possessed, or pretended to possess, was down to low-water mark. He had a piece of wharf extending out into deep water shown on this plan and it is mentioned in his deed of acquisition, but it is especially mentioned in the deed, that all Ellis acquires from Jamieson or from The Harbour Commissioners is down to the low-water mark.

So far as his wharf extends beyond low-water, it was tolerated, first by the Government, and after-

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wards by the Quebec Harbour Commissioners. It is by tolerance that the Ellis wharf was there, and it is by tolerance that that wharf is there now.

I must also say that no claim was made in this case on any other title, and I am certain that none existed in favour of Ellis beyond low-water mark.

The tolerance granted by the Quebec Harbour Commissioners in 1861 for this wharf to lie on their land below low-water mark continues to exist, the situation is exactly today what it was then, viz., that this wharf lies by tolerance on the Harbour Commissioners land. The wharf belongs to the defendant, I do not deny that. I am quite willing they should be compensated for it, but they cannot ask compensation for the land, it does not belong to them.

Whether against the Crown or against the Quebec Harbour Commissioners, that possession began precariously. If possession is taken by tolerance as in this case, it is always deemed to be continued, and not possession animo domini, unless in intervention of title. In this case there is none. There is a stock example of this in France, where a forest was possessed for 700 years by a community, and it being proved that they were precarious possessors, it was held that no prescription could be acquired, as no intervention of title had been begun. All that Mr. Ellis pretended to have as to the soil, was down to the low-water mark, so far as this eastern section is concerned.

In order to prescribe by thirty years one must possess as proprietor with the intention of being the proprietor. The rule is, however a possession commences it continues that way. If possession commences as by tolerance it continues as by tolerance

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and it can have no effect at all in acquiring prescription. It is only possession animo domini which has that effect. Of course the rule of the *Code* is that everyone is presumed to possess as proprietor. I combat that by going back to Ellis' title and show it was not a possession beyond low-water mark. He acknowledges in this deed he has no title to it. Section 2196 of the *Code* says:—"Acts which are "merely factulative or of sufferance, cannot be "the foundation, either of possession or of prescrip- "tion."

I quite admit that if Mr. Ellis had no title whatsoever and had been in possession with the wharf built upon the property, the presumption would be that he was possessing animo domini, but if I go back and find that in the title, the deeds by which he got possession, there was an acknowledgment, express or implied, on his part, that it was only a sufferance that he was exercising, I thereupon establish, I contend, there was no legal possession and there can be no prescription—regardless of whether the property belongs to the Crown or The Quebec Harbour Commissioners, or anybody else. If he did not have possession animo domini, he cannot prescribe, and I will show by his deeds by which he entered into possession he acknowledges that he had no claim or rights to the property whatever.

[BY THE COURT: Do you give him the wharf by benevolence or by title?]

I think he is entitled to it by law. He was allowed to put his wharf there, it was allowed there by sufferance, but it belongs to him. We cannot take the wharf away from him without compensation, perhaps the Crown at the time could have forced him to remove it, as a nuisance, but to take it from him without

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compensating him, is another thing, and I admit we are bound to compensate him for the wharf.

With regard to the title of lot 2381, that depends on whether the Harbour Commissioners had a right to sell or not. If the Harbour Commissioners had a right to sell that land; if they had a right to sell below high-water mark, the sale exists and the defendants in this case own the whole thing.

The Doherty lot, No. 2385 is the only one in which they claim to go as far as low-water mark. There is nothing really between us there except as to whether the Doherty's or the present defendants can claim title to a beach lot—can claim ownership of a beach lot in this public harbour without any title to it, either from the Crown or from anybody.

The only title they can show is from individuals, the Doherty Estate, but for this property to go out of the domain of the Crown or to leave the Harbour Commissioners, there should be some title. They cannot prescribe against the Crown, and in case of the land belonging to the Harbour Commissioners, I say that the Harbour Commissioners had no right to sell.

Now with regard to 4402. William Wall who gave this title died and left a number of heirs, Jean Wall, Marie Wall, Joseph Wall and another, and these individuals sold to Hearn.

Now what was it they sold? They sold their quarter share each in succession to the late William Wall, so that the late Mr. Hearn and the defendants here, are here merely as representing William Wall. They acquired what rights he had and continued his rights. Whatever William Wall had, the present defendants have and we have this titre nouvelle granted by their immediate auteur, declaring what he possessed was down to the low-water mark, on the old John

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Baptiste Larue plan. How they can come forward and say their possession went beyond low-water mark, I fail to see.

[BY THE COURT: Their wharf is built beyond.]

It is a matter of tolerance. The Harbour Commissioners are not so litigious as to call in question an act of possession or use of the beach.

The defendants want to set up possession to a beach because some of their tenants left their boats there, and to set up possession to the deep water because the Harbour Commissioners did not prevent them putting a boom there. I think they are over shooting the mark, both in law and in fact.

Because the property is described as cadastral number 2403 in the sheriff's sale and because the cadastral description declares that the lot goes out as far as the Harbour Commissioners line, then they claim a title. I think it is clear and undoubted law that the cadastre does not create title; the cadastre is the supposed description of different lots lying within limits, but it does not create title. What was sold and what was conveyed was the rights that were owned by Mrs. Charlton. Mrs. Charlton was the defendant. Elizabeth Doyle and Mrs. Charlton were the defendants in the suit of the property sold by the sheriff, and what was actually conveyed was only what rights Mrs. Charlton had, as far as any surplus was concerned, Mrs. Charlton was not in possession animo domini. Mrs. Charlton only claimed to own and only possessed down to low-water mark. With regard to any other property, nothing beyond low-water mark was animo domini.

The descriptions contained in 12-E (Lot 2409) shows with perfect clearness that all that is intended to convey, and all that was conveyed, was down

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to low-water mark, and the expression of the Harbour Commissioners' line is not to be used as contended for in the present case on behalf of the defendants. Our title deed to 1839 was down to low-water mark, and was established by the plan which is in the exhibits in the case.

We took the property over by a deposit of the plan and we became the absolute purchasers from the fact that the Harbour Commissioners accepted our tender.

I submit the court should hold that at the time of the expropriation, the title was in the Quebec Harbour Commissioners and they are entitled to receive the money.

The technical title of ownership is in the Harbour Commissioners and in the Harbour Commissioners alone, the registered owners.

The very terms of the sheriff's deeds themselves, every one of them, state exactly what they purport to convey. If there be a description mentioned, that is not to be consisdered very seriously because the deed itself states that there is no warranty of contents.

I have listened with a great deal of interest to the authorities Mr. Stuart has cited, but they do not apply to this case. The cases concern an entirely different matter and are, not applicable. What is applicable are the words of the statute.

[BY THE COURT: Would you contend under section 2, of the Act that the Harbour Commissioners would have no right to lease.]

What is contemplated is that they should build wharves and develop them, they cannot part with the fee.

Mr. *Dobell* followed on behalf of the Crown and submitted that the Harbour Commissioners are the

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Crown's representatives and the Crown owns the soil of the river.

Taylor v. The Montreal Harbour Commissioners.(1) I think that case will clearly show the soil of the river still remains in the Crown.

As long as the solum belongs to the Crown, defendant cannot prescribe. See *La Chapelle v. Nault* (2). The court there says prescription cannot be invoked against the lands belonging to the Crown, as long as these lands have not passed out of the public domain.

Counsel for defendants, referred to the case of *Quebec Harbour Commissioners v. Roche,*(3) that was a case with respect to arrears of rent. I quite agre that in that case there is a prescription against the Harbour Commissioners, because their charter distinctly says that all rents that have been previoulsy paid to the Crown, shall belong to them, but these lands that are not given away by previous title are vested in the Harbour Commissioners in trust.

[BY THE COURT: "Possess" would cover what they have under section 2.]

Mr. *Stuart,* in reply. My contention is that the Harbour Commissioners were given power to dispose of all the property that they were vested with.

Now, with respect to non-registration (See Article 2098 of the Code).

Mr. Gibsone's argument is this: that the title deed has not been registered. We have made an offer, the Harbour Commissioners have accepted that offer, that makes a binding bargain between us. The Harbour Commissioners could no more accept the offer to purchase the land of which they were not the owners than anybody else could. They did

(1) Q.R., 17 S.C. 275.

(2) 6 Rev. de Jv. 5.

(3) 12 R.S.C. 365.

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not purport to sell. They said in the pleadings, we do not own the land but are willing to accept your offer.

One other point of law with respect to the sheriff's sale is submitted. Mr. Gibsone argues as to Mr. Ellis and those other persons to whom this property was sold, that they were in possession to the extent of having wharves—they were there by tolerance, therefore the man who buys acquires only the rights which the owner had. I look upon that view directly contrary to the holdings of all of our Courts. He is the apparent owner,—they seized upon him. The real owner must come in and say that property is mine and stop the sale. If he does not do that, he loses all his rights against the purchaser, but he would go a good deal further. It extinguishes absolutely his rights and every authority cited is in those terms. Mr. Gibsone's argument would go to reduce the value of the sheriff's title, and you would be bound to investigate what was the title of the defendant. Our law is distinctly the reverse. If a property is sold with a person in possession, the real owner must come in, and, if he pretends he is the real owner and the man who held the property was a tenant, he must take proceedings to have the sheriff's sale vacated. As long as the sheriff's sale stands, it is good.

AUDETTE, J. now (May 6th 1916) delivered judgment.

This is an amended information exhibited by the Attorney-General of Canada whereby it appears, *inter alia*, that, at two different dates hereinafter mentioned, certain lands belonging to the defendants, were taken and expropriated by the Crown, under

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the authority of 3 Ed. VII Ch. 71, for the purposes of the National Transcontinental Railway, a public work of Canada, by depositing plans and descriptions of the same, on the 8th November 1913 and the 30th November 1915, respectively, in the office of the Registrar of Deeds of the Registration Division of Quebec.

The lands expropriated herein are parts of the defendants' properties respectively known and referred to herein under their cadastral numbers, 2376, 2381, 2385, 2393, 2394, 2402, 2403, 2404, 2409 and 2410.

The Crown, by the amended information, offers the sum of $27,079.49 in respect of the lands described in paragragh 2 of the said information, together with 40 cents a superficial foot in respect of the land described in paragraph 6B thereof.

The defendants representing the John Hearn Estate aver by their plea that they are owners of all the lands expropriated herein, and claim therefor the sum of $254,560.

The defendants, The Quebec Harbour Commissioners, claim the ownership of the property described as Lots 102A, 104B, 107A, 107B, 105B, 107C, 108B, 109A, 110F, 110E and 110C, on the plan deposited on the 30th November 1915,—and also all land below low-water mark on cadastral lots 2385, 2402, 2403, 2404, 2409 and 2410, in virtue of 22 Vict. Ch. 32. And they further declare they accept the Crown's offer of 40 cents per superficial foot for the same, as stated in the amended information.

The defendant, The City of Quebec, claims the small passage or land on 2376 and the street known as Phillips' Lane between 2389 and 2392 and also the street called by them "McInenly" lying between Lots 2398 and 2402 and with respect to the indemnity

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to be paid therefor, they leave that matter in the hands of the Court.

While these several lots or parcels of land will have to be treated separately and a special compensation fixed in respect of each of them, I wish as a prelude, to offer some general observations respecting the character of the properties and their location in the City of Quebec. A reference to plan Exhibit No. 3 is necessary to properly understand their location and their relative juxtaposition. All these properties are situate on Champlain street, in "Lower Town" in the City of Quebec, and extend back of that street towards the River St. Lawrence, in the Harbour of Quebec.

The Crown has expropriated from these properties the right of way for the National Transcontinental Railway, coming into the city on the water front as far as the old Champlain Market, and took all the land, belonging to the defendants, on the river side from the north line of the right of way. Thus leaving the defendants with a certain piece of land on the northern side of the right of way to Champlain street. The part or piece of land so left to the defendants is, with the exception which will be hereafter mentioned, covered with dwelling houses with a small yard at the back. These buildings are being used for residential purposes and are subdivided into several small lodgings to the one house and are occupied by tenants of the labouring class, yielding very small net revenues. The back part of their property, that is the part on the water front, is in some cases partly covered by old wharves running out at various distances. These wharves were built many years ago for a trade which no longer exists and for a number of years back have practically remained unused and indeed show the

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result of wear and tear occasioned by time and age. While indeed, these properties at some time back, when the timber business and ship building were at their best in Quebec and when large rafts of timber were being towed down the River St. Lawrence to Quebec and placed in the several coves adjoining the city, and while the water front of some of these properties were then used for retaining the logs and timber by booms stretched in front of them,—these properties then commanded quite a value;—on the other hand this trade has now almost completely vanished and disappeared from Quebec since a number of years, with the result that this water front property had gone down to very little value on the market at the present time and at the date of the expropriation. In fact, it is a qusetion as to whether there would now be a market for such property at Quebec, but for the public works now going on.

By reference to the title deeds respecting these properties, it will be found that most of them were sold by the Sheriff and bought for trifling amounts. Some of the witnesses, however, looking probably at the prospect of Quebec in the future, taking into consideration the prospective potentialities of these properties, when the harbour will have been completely developed and possibly a large trade created, have placed a large value upon this water front property at the present time which I am of opinion is not justifiable under the present circumstances while admitting they have a certain value; but this potential adaptability is too far in the future to be given it that value to which they testify. Indeed, the compensation which should be awarded is in no sense more than the price that legitimate competition of purchasers would reasonably force it up to. Why

should the Crown be charged with this enhanced value to these properties which is to be derived from the very public work for which the expropriation has taken place? Who besides the Crown could undertake these gigantic works? There would seem to be no competition. And when the owner of such property is given more than the price or market value of his property to him for his own purposes and all that any one else would offer him, except the taker, what else can he ask, if not part of the value of that land to the taker after the latter has given it this enhanced value by the expenditure of large sums of money in the performance of the works under development? Why should the public Exchequer be charged with this enhanced value? This element of potentiality or prospective capability, call it what you may, is after all nothing but an element in the market price itself.

I cannot refrain citing here again the admirable observations upon this point by Rowlatt, J. in the case of *Sidney v. North Eastern Railway*, (1) at page 637, where he says, viz:—

> "Now, if and so long as there are several com-
> "petitors including the actual taker who may be
> "regarded as possibly in the market for purposes
> "such as those of the scheme, the possibility of
> "their offering for the land is an element of value
> "in no respect differing from that afforded by the
> "possibility of offers for it for other purposes. As
> "such it is admissible as truly market value to the
> "owner and not merely value to the taker. But
> "when the price is reached at which all other competi-
> "tion must be taken to fail to what can any further
> "value be attributed? The point has been reached

(1) (1914) 3 K. B. 637.

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"when the owner is offered more than the land is "worth to him for his own purposes and all that "any one else would offer him except one person, "the promoter, who is now, though he was not "before, freed from competition. Apart from com- "pulsory powers the owner need not sell to that "one and that one would need to make higher "offers. In respect of what would he make them. "There can be only one answer—in respect to the "value to him for his scheme. And he is only "driven to make such offers because of the unwil- "lingness of the owner to sell without obtaining "for himself a share in that value. Nothing repre- "senting this can be allowed."

And at page 576 of the *Cedars Rapids Case* (2) Lord Dunedin lays down the following rule for guidance upon the subject of special adaptabilities in the following language:

"For the present purpose it may be sufficient "to state two brief propositions:—(1) The value "to be paid for is the value to the owner as it existed "at the date of the taking, not the value to the "taker. (2) The value to the owner consists "in all advantages which the land possesses, present "or future, but it is the present value alone of "such advantages that falls to be determined.

"Where, therefore, the element of value over "and above the bare value of the ground itself "(Commonly spoken of as the agricultural value) "consists in adaptability for a certain undertaking "(though adaptability as pointed out by Fletcher "Moulton, L. J., in the case cited, is really rather "an unfortunate expression) the value is not a "proportional part of the assumed value of the

(2) (1914) A. C. 569.

"whole undertaking, but is merely the price, en-
"hanced above the bare value of the ground which
"possible intended undertakers would give. That
"price must be tested by the imaginary market
"which would have rules had the land been exposed
"for sale before any undertakers had secured the
"powers, or acquired the other subjects which
"made the undertaking as a whole a realized pos-
"sibility".

Then the use made of these properties at the time of the expropriation must be taken into consideration. *Bailey v. Isle of Thanet* (1).

Under the provisions of sec. 2 of 22 Vict. Ch. 32 (1858), all land below the line of high water on the north side of the River St. Lawrence, within the boundary of the harbour of Quebec, as defined by Sec. 1 of the same Act, became vested in the Corporation of the Harbour of Quebec in trust for the purposes of that Act; reserving, however, to every riparian and *other proprietor of a deep water pier*, or of *any other property* within the harbour, the right to continue to use and enjoy his property and mooring berths in front thereof,—until such right, title or interest shall have been acquired by the Corporation of the harbour of Quebec. In other words, whatever riparian right and rights of moorage existed at the date of the Act, were duly respected and reserved. Therefore these rights so preserved by the Act, would prevent the Corporation of the Harbour of Quebec from building opposite these lands without first acquiring such rights.

Then in 1899, by 62-63 Vict. ch. 34 Sec. 6, the Consolidation Act, the harbour of Quebec is again defined and are excluded therefrom the lands and

(1) (1900) 2 K. B. 722.

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certain rights in respect of which the Harbour Commissioners had not acquired title,—and by Sec. 21 thereof, all the lands defined as forming the harbour, subject to the reservation just mentioned, are also declared vested in the corporation and the fee is in the trustees for the purposes of the Act,—for the purposes of their trust.

Having offered these general observations, I will now deal with each lot separately.

Lot 2376.

The two principal questions to decide with respect to this lot are first the extent of the land to which each defendant's title will show him entitled to and secondly the amount of compensation for the rights and interest in the property to which the defendants are respectively entitled to.

The counsel for the Crown, in his argument, practically recognized defendant Hearn's title down to low water mark, together with the rights in the wharves but not in the land upon which the wharves are erected south of low water mark.

The chain of title in respects to this lot being somewhat long, it is found unnecessary to refer to it in full details, it will be sufficient to say that all these lands below high water in the harbour left the lands of the Crown either by grants from the Crown or under the statute above referred to, (the Act of 1858) and whereby what had not already been sold, became vested in the Harbour Commissioners. The Harbour Commissioners have made the sales referred to at trial, the deeds for the same being filed herein as exhibits, upon the usual reservation of ground rents and the capital thereof guaranteed by the privilege of *bailleur*

de fonds, and as further secured by their *oppositions afin de charge* and the judgments thereon, at the time of the Sheriff's sale. The Harbour Commissioners are also entitled to the ground rents,—or the capital representing the same, under the Crown Grants issued before 1858 as in the case of the Maxham Grant. Some of the wharves built below low water mark were in existence as far back as 1853 and while the Crown declares its willingness to pay for the wharf, it declines to pay for the land upon which such wharves are resting for that part below low water. It was held by Andrews, J., in re *The Quebec Harbour Commissioners v. Roche*, (1) that "The Quebec Harbour Commissioners "(created by the Statute 22 "Vic. Ch. 32) are a corporate body, distinct from "the Crown, and cannot claim the privileges of the "latter in respect to the limitations for ground rents "and dues, vested in them in trust, on immoveables "originally granted by the Crown"; and if adopting that view, it would be necessary to decide that, the possession of the solum, below low water mark, by the erection of these wharves has given title to the owners thereof as against the Harbour Commissioners, in whom the harbour, as defined by Sec. 1 of the statute referred to, is vested. See also in support of the same proposition, the case of *The Montreal Harbour Commissioners v. Record Foundry & Machine Co.*, (2) confirmed on appeal,—*Johnston v. O'Neil*, (3) *The King v. Tweedie*, (4).

But are not, indeed, the rights of the wharf owner conceded and protected by the proviso of Sec. 2 of 22 Vict. Ch. 32 which reads as follows:—

"Provided always that every riparian and other "proprietor of *a deep water pier*, or any other pro-

(1) Q. R. 1 S. C. 365.
(2) Q. R. 38 S. C. 161.
(3) (1911) A. C. 583.
(4) 52 S. C. R. 197.

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"perty within the said boundaries, shall continue "to use and enjoy his property and mooring berths "in front thereof, as he now uses the same, until "the said corporation shall have acquired the "right, title and interest which any such proprietor "may lawfully have in and to any beach property "or water lot within the said boundaries; nor shall "the rights of any person be abrogated or diminished "by this Act in any manner whatever."

Then the Consolidation Act of 1899 (62-63 Vict. Ch. 34), by sub-section 2 of sec. 6 excludes these wharves from the harbour of Quebec, and they therefore do not belong to the Harbour Commissioners.

Counsel for the Crown further contends these wharves so built below low water mark, without a grant and allowed to be there by tolerance, could be ordered to be removed as a nuisance. That might be so as against a trespasser, but not as against the owner of the wharf, who is protected by the statute. And after all, what tangible interest or right would be left, after the right to maintain such wharf is recognized by statute, the ownership of the same being in the present occupants of the soil?

But for the expropriation proceedings, these rights would never have been questioned. And the interest in and the right to have these wharves where they stand, so protected by the two statutes above mentioned, are substantial and any interference therewith should be compensated. And after all, is it not only reasonable and just to concede the ownership or the equivalent thereof, of this land upon which rests these wharves,—with rights or moorage and all other valueable rights attached thereto,—which had been in the possession and enjoyed by the defendant Hearn and *his auteurs* for years and years back,—more than

would be necessary to acquire them by prescription. The owners have the right to maintain their wharves and to use them and that right cannot be interfered with without compensation, under the Act of 1858.

It is, however, otherwise respecting the small piece of land below low water mark claimed by the defendants and which lies at the south eastern extremity of this lot within the area marked by letters U, X and Z on plan 3. This small piece of land or beach is claimed by possesion consisting in the mooring of boats at the wharf, the bottom of such boats resting on the water above the bed, or by pulling these boats ashore and unloading thereon or on the wharf, cargoes or small pieces of wood picked up in the current in the open. Such possession was not and cannot be construed to have been done *animo habendi, possidendi et appropriandi.*

Having said so much, we have now to consider the question of the quantum of the compensation which should be paid the defendants in respect of this lot 2376. A difficult question, indeed, in a case of this kind in view of the fact, mentioned in the beginning, that there was practically at the date of the expropriation, no market for that class of property in that neighbourhood, but for the consideration of the public works in question in this case.

On the north eastern part of this lot, there is a building yielding very small revenues. There is no building on Champlain street to the west of Lot 2377. The net revenue of the dwelling has been in 1910-1911,—the sum of $132.51; in 1911-12, the sum of $145.11; in 1912-13, the sum of $26.51 and in 1913-14, the sum of $185.32,—and this has been the average revenue of the property during the preceding 20 years. The wharves gave a barely nominal

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revenue. The assessment of the lot in 1903-04 was $4,600; in 1908-09, $10,000 and in 1913-14, $10,000. Therefore, from the northern line of the right of way to Champlain street the estate of Hearn is left, for the eastern part, with a building and a small yard at the back and for the western part with a vacant lot.

In accordance with an understanding between the Court and counsel, it being realized at the argument that I had not upon plan 3 the several areas measured, I have procured from Mr. A. Tremblay the engineer who has measured all these lots—and whose measurements have been readily accepted,—the measurement of the area for which compensation should be, in my opinion, allowed and it has been marked in yellow on a copy of plan Exhibit No. 3, which copy I have placed on record as No. 3b. The total area should be 25,280 sq. feet, to which should be added the area of the Gore, namely 1,529 sq. feet,—but the Gore not running down to the Commissioners' line. From this area should be deducted 641 feet, the area covered by the small lane which belongs to the City of Quebec; leaving a net area of 26,168 sq. feet for which compensation should be given the Hearn Estate.

I have had the advantage, accompanied by counsel, of visiting and viewing the premises in question, and after giving due consideration to the evidence and to all the circumstances of the case, I have come to the conclusion to fix as a fair and liberal compensation, the sum of $51,373.57, inclusive of the usual 10% for compulsory taking. This amount to cover the value of the land taken, the wharves, all riparian or other rights of every kind whatsoever, together with the damages to the balance of the property

remaining in the hands of the Hearn Estate. This sum however, is to be paid to the said Estate, upon giving the to Crown a release of the capital, rents or interest remaining due the Quebec Harbour Commissioners under the several grants or sales in respect of Lot 2376. Failing the production of such release, the capital of the said rents, with all arrears and interest, are to be paid the Harbour Commissioners and then the balance paid over to the Hearn Estate.

Lot 2381.

This lot, as will be seen by reference to plan Exhibit No. 3, extends from Champlain street to the Harbour Commissioners' line. The only legal objection raised by the Crown in respect of this lot is the contention that the Harbour Commissioners had not, under the Act, the power to sell at the date they sold, on the 10th June, 1864; they could only sell what they had acquired by purchase subsequent to the passing of the Act. I must hold against that view from the reading of the Act; and indeed it is hardly proper for the Quebec Harbour Commissioners in an action of this kind, to come and say to the defendant Hearn, (who claims under their auteurs Gregg, the vendees of the lot):—True I sold you this beach lot, but I had no power to do so, and in the distribution of the compensation monies here I claim the same. That is a right to be ascertained under the Expropriation Act as hereinafter mentioned under the observations made in respect of lots 2404 and 2410, and as between the Harbour Commissioners and the Estate of Hearn. It is unnecessary to repeat herein in support of my view, all is said under lots 2404 and 2410, which will all apply to this lot so far as applicable.

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There is a dwelling on Champlain street with a small yard at the back. Here as in respect to all the lots expropriated, the Crown has taken everything south of the northern line of the right of way leaving the defendants with a building on Champlain street and a small yard at the back. No revenue was ever derived from the wharf and the house yielded a net revenue in 1910-11 of $82.66 and in 1914-15—$128. The revenues since 1890 have been about the same.

I have had the advantage of viewing these premises and giving due consideration to the evidence and all the circumstances of the case, I have come to the conclusion to fix the compensation at the sum of $9,450.49, inclusive of the usual 10% for compulsory taking. This amount to cover the value of the land taken, the wharf, all the riparian rights of every kind whatsoever, together with the damages to the balance of the property remaining in the hands of the Hearn Estate. Out of this sum the capital, rent and interest, which may remain unpaid to the Quebec Harbour Commissioners shall have to be deducted and paid over to them.

Lot 2385.

This property which runs down to low water mark was acquired by the Honourable John Hearn on the 10th December, 1884, more than 30 years ago. The beach lot between high water and low water left the hands of the Harbour Commissioners on the 15th October, 1867. The Estate of John Hearn is entitled to the whole of the compensation, upon paying to the Harbour Commissioners the capital, rents and interests, which may remain due upon this lot. The total

area taken is 2,529 square feet upon which there are 523 cubic yards of wharf.

The Crown has expropriated from this property the right of way for the National Transcontinental Railway taking all the land belonging to the estate of Hearn, on the river side from the north line of the right of way, which extends to low water mark. Thus leaving the defendant with a certain piece of land on the northern side of the right of way to Champlain street, and upon this piece of land so left to the defendant, there is a dwelling house with a small yard at the back. This dwelling house yielded a net-revenue in 1910-11 of $121.43 and in 1914-15, $133.75, this being the average for the ten preceding years. No special revenue was derived from the wharf which was for the use of the tenants.

I have had the advantage, accompanied by counsel, of viewing this property and taking the evidence into consideration and all the circumstances of the case, I am of opinion to fix the compensation at $5,134.14,—inclusive of the usual 10% for compulsory taking, with interest thereon from the 8th November 1913 to the date hereof. This amount to cover the value of the land taken, the wharf, all the riparian rights of every kind whatsoever, together with the damages to the balance of the property remaining in the hands of the Hearn Estate. Out of this sum, the capital, rents and interest which may remain unpaid to the Quebec Harbour Commissioners shall be deducted and paid over to them.

Lots 2393 and 2394.

These two adjoining lots will be treated together. The Crown has expropriated from this property,

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the right of way for the Transcontinental Railway, taking all the land, belonging to the defendant, the Hearn Estate, on the river side, from the northern line of the right of way; thus leaving the defendant with a certain piece of land between the northern line of the right of way and Champlain street, composed of two adjoining piedes of vacant land.

The southern boundary of these two lots is admitted down to low water mark. The total area of land expropriated is 8,552 sq. feet upon which there is 2,078 cubic yards of wharf.

These two vacant lots yielded practically no revenue, excepting perhaps some years about $20. The wharves were not leased.

The municipal assessment in		1903-04 was	$ 200.
"	"	1908-09 was	200.
"	"	1913-14 was	2,700.

I have had the advantage, accompanied by counsel, of visiting and viewing these premises, after giving due consideration to the evidence and to all the circumstances of the case, I am of opinion to fix the compensation at the sum of $10,841. Considering that these properties yielded practically no revenue and were not occupied, there is no reason why there should be any allowance for the compulsory taking. This amount will carry interest from the 8th November, 1913.

Lots 2402, 2403, 2404, 2409 and 2410.

These five adjoining lots will be treated together, with respect to ascertaining the conpensation for the same. The title to each and their respective area will, however, have to be approached separately,

but the value of the five lots will be fixed en bloc, for the five, as was done in adducing the evidence.

Lot 2402.

Coming first to lot 2402, it may be said that the Crown concedes title to low water mark only, and the defendant, the Hearn Estate claims down and out to the southern Harbour Commissioners' line. The wharf built upon this lot goes south beyond low water mark for a certain distance. The Hearn Estate has no grant or title for that part below low water mark; but claims by prescription down to the Harbour Commissioners' southern line. The possession invoked by them is not such as would give title by prescription, and for the reason given in respect of lot 2376, I will allow down to the end of the wharf, subject to what has already been said under No. 2376.

In Exhibit 33, we have an Order in Council passed on the 22nd April, 1837, authorizing the issue of letters patent to one Peter Murphy, upon the latter producing satisfactory titles to the Attorney-General that his property extends to low water. We have no evidence of any such compliance with the requirements of this Order in Council, and it was never proved that any grant did ever issue.

The net revenues derived from the dwelling upon this lot has been in 1910-11, $162.91, and in 1914-15 $208.46. The revenues having been about the same for the ten preceding years.

The area for which recovery can be made will be down to the end of the wharf, there being no title or proof of any kind showing that the deep water lot ever passed out of the hands of the Harbour Commissioners as vested in them under the Act 22 Vict.

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Ch. 32. The compensation will also cover all riparian rights, including that of stretching booms in front, subject to the paramount right of navigation.

Lot 2403.

The claim made by the Hearn Estate in respect of this lot is down to the Harbour Commissioners' southern line. They have a wharf built out some small distance below low water mark. The Crown concedes title to low water mark.

There has been no grant proved for the area between low water and the said Harbour Commissioners' line; but the defendants having bought at the Sheriff's sale on the 28th November, 1890, the property sold on Edward J. Charlton, and the Sheriff's title describing the lot by the cadastral No. 2403, instead of a description by metes and bounds, they claim that the whole cadastral No. 2403, carries them down to the Commissioners' southern line.

We will now have to ascertain what did actually pass under this sheriff's title, and to what area did the fee in the defendant Charlton extend at the time of such sale.

This lot was sold by Coffin to Doyle, on the 1st February, 1826, down to low water mark. Doyle died and his widow Johanna Nolan married Miles Kelly. On the 7th February, 1856, Mrs. Miles Kelly gave *titre nouvel* to the Coffin Estate, and in that titre the property is described again by metes and bounds down to low water mark. Mrs. Miles Kelly died leaving her property to her daughter of the first marriage, Elizabeth Doyle, who married Charlton, and on the 14th October, 1868, she, Mrs. Charlton, gave again *title nouvel* wherein this property

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is still described down to low water mark. After the cadastre became in force, the registration of this lot was renewed on the 23rd January, 1873, and therein again the property is described down to low water mark. There is also the sale by the Sheriff on the 4th August, 1884, to Bolger, and the sale of the latter to Charlton, subject to the hypothecs in favour of John Hearn. These two deeds speak clearly for themselves. Then comes the sale by the Sheriff in 1890 to John Hearn, above referred to.

What was vested in the Hearn Estate's predecessors in title is clearly what, down to the time the cadastre came in force, namely in 1872, is described by metes and bounds to low water mark. True the Sheriff's sale to Hearn, in 1890, described the property sold by its cadastral number; but the cadastre does not constitute title. It is merely descriptive, and it may be said it is very often erroneous in its description, as it has been my experience to ascertain in respect of a number of properties a little higher up the river.

Be that as it may, the question now to be decided is whether or not, by the Sheriff's sale of 1890, that part,—between low water mark and the Harbour Commissioners' southern line, did pass, and whether notwithstanding the title to the same held by the Quebec Harbour Commissioners under the statute of 1858 and 1899, the ownership of this space passed to the defendant under the Sheriff's title.

Under Article 699, C.P.C., the seizure of immovables can only be made against the judgment debtor, and he must be, or reputed to be, in possession of the same *animo domini*. Under Article 779, the purchaser takes the immovable in the condition in which it is at the time of the adjudication,—and under Article

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780, the adjudication is always without warranty as to the contents of the immovable.

An important fact must also be borne in mind and not lost sight of, and it is that this Sheriff's sale of 1890 is upon Charlton who always knew the contents of the property since he was a party to several of those deeds in which this property is always described down to low water mark. As I have already said in the case of *The King v. Ross* (1) there is here no question of a third party who never had anything to do wiith this property, and who might have to be put upon his enquiry. Charlton knew what he was possessed of, and John Hearn must have known this property, as he had a mortgage or hypothec upon the same; but I regret to say that deed in favour of John Hearn which is referred to in the Bolger deed has not been filed herein. That deed might have thrown much more light upon the subject.

However, it is obvious from all that has been said that the sale of the area of that property below low water mark was made *super non domino et non possedente* and that therefore there was no transfer of the property. The Sheriff's seizure and sale were made contrary to the provisions of Article 699, C.P.C. above referred to. The adjudication only transferred the rights possessed by the person upon whom the immovable was seized and sold.

If the Sheriff, through clerical error or otherwise, in drawing and making his judicial title, included in the title a parcel of land which he did not sell or did sell *super non domino et non possedente*, the title to such parcel of land did not pass.

(1) 15 Ex. C. R. 38.

The net revenues derived from the dwelling upon this lot has been in 1910-11, $89.37, and in 1914-15, $134.52.

Having said so much, there now remains the question of ascertaining the amount of compensation for this piece of land expropriated down to low water mark and the damages resulting from such expropriation in respect of the balance of the property, held in unity by the Hearn Estate. Following the mode of valuation adopted at the trial, the compensation will be hereafter fixed for the lots 2402, 2403, 2404, 2409 and 2410 at the same time, and for the reasons mentioned herein in respect of lot 2376, the compensation will extend to the end of the wharf, in the manner hereinbefore set forth.

Lots 2404 and 2410.

These two lots standing in the same legal position will be treated together.

The Crown concedes title in the Hearn Estate down to low water mark. The Hearn Estate claims down to the Quebec Harbour Commissioners' southern line, under deed from the latter, bearing date the 13th July, 1867. However the Crown pleads that as these deeds have not been registered, they have no effect as against the Crown, the latter only recognizing the Quebec Harbour Commissioners as proprietors of the same.

The plaintiff in this contention relies upon part of Article 2098 C. C. which reads as follows, viz:—

"All acts *inter vivos* conveying the ownership "of an immoveable, should be registered at length, "or by memorial. In default of such registration, the "title of conveyance cannot be invoked against any

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"third party who has purchased the same property "from the same vendor, for a valuable consideration "and whose title is registered. Registration has "the same effect between two donees of the same "immoveable."

The palintiff's contention with respect to want of registration, would have to be given effect in a case where the question of priority of claims would have to be established. But it is otherwise in a case of expropriation where the rights and interest of all parties in the lands taken, must be determined. The Court here has to determine the adverse contentions of all parties before diciding to whom the compensation moneys are to be paid by the Crown.

Indeed, under Sec. 26 of The Expropriation Act, the Information of the Attorney-General must set forth the persons who, at the date of the expropriation, had any estate or interest in the land taken and the particulars of such estate or interest and of any charge, lien or encumbrance to which the same was subject.

In compliance with this enactment, we have now before the Court, all parties who have any right or interest in the land. We have the Quebec Harbour Commissioners and the Hearn Estate before the Court. And because the deeds of sale of the Harbour Commissioners in favour of Hearn have not been registered, they will come and say, as between Hearn and themselves, it is true we sold you this property under good and valid deed, but it has not been registered and we will claim the compensation for the same.

Why, this would be mere irony of law and justice.

It is not in the mouth of the Commissioners to speak in this manner to their legal grantee. And I

advisedly say "legal grantee" because the deeds of transfer are absolutely good and valid. The arm of the law cannot be extended to help and maintain such contention.

The Hearn Estate are the legitimate and true proprietors of these water lots and as the rights of the parties to be here determined in respect of these lots are between the grantors and the grantees of the same,—and both parties are before this Court, there is no question of third parties,—the question of registration does not practically come up. The Crown cannot be treated as a third party. By the Information, the plaintiff takes and expropriates certain real property, and declares his readiness to pay the compensation to whomsoever will be declared entitled thereto and it is between such parties that the question of title is to be determined.

I therefore find that the Hearn Estate is the true owner of this property down to the Quebec Harbour Commissioners' southern line, and is entitled to the compensation moneys in respect of the same.

Having so found, there now remains the question of ascertaining the amount of compensation in respect of the two lots 2404 and 2410 down to the Harbour Commissioners' southern line and the damages resulting from the expropriation in connection with the balance of the property held in unity by the Hearn Estate. Following the mode of valuation adopted at trial, the compensation will be hereafter fixed for the lots 2402, 2403, 2404, 2409 and 2410 at the same time.

The net revenues derived from the dwelling on 2404 in 1910-11 was $130.35 and in 1914-15—$61.25. The net revenues derived from the dwelling on 2410 were in 1910-11, $92.25 and in 1914-15—$122.50.

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The revenues from the wharves have been very small.

Lot 2409.

The Estate of Hearn claims this lot down to deep water extending as far as the Harbour Commissioners' southern line.

The Crown admits title down to low water mark.

The defendants claim title both under a Sheriff's sale of one-eighth of the property, bearing date the 1st May, 1877, and under the sale of seven-eighths by John Walsh on the 18th May, 1878.

In both these titles, the description of the property makes use of the following expression in speaking of the southern boundary, "extending in depth to "*low water line,* bounded in front towards the north "by Champlain street, in rear by the Commissioners' "line."

What is the fair and reasonable construction and interpretation to be placed upon this description under the circumstances, as will best ensure the attainment of the object of these deeds and of such description according to its true intent, meaning and spirit?

It is obvious, and it could not be more clearly worded that the sales of this property cover the land extending "*in depth to low water mark*". Then when the deeds proceed to give the boundaries, they say that in the rear it is bounded by the Harbour Commissioners' line. The Harbour Commissioners' line therein mentioned means obviously the line of division between the property sold and what remained in the hands of the Commissioners. It is too clear indeed that when the Commissioners sell down to low water line,—in so many words, and they being

the owners of what is south of low water; they would call it their line, and in this case it cannot mean anything else and could not be construed to extend to the southern end of their property. Just as much as one would, in the description of two adjoining properties. The line of the adjoining owner could not be meant to take his whole property, to extend to the far end of the property belonging to the vendors; but read in a reasonable manner, it could only mean the line adjoining the two properties, and in the present case the line adjoining this property to the south of the low water mark, the Commissioners being proprietors of the land to the south of low water mark.

There is no sale by the Harbour Commissioners in respect of the deep water lot. However, the defendant endeavours to further construe the ownership thereof from the description in the deeds of sales for Lots 2404 and 2410, because that description mentioned Hearn as the proprietor on the eastern and western boundaries, concluding that it is an acknowledgment in the ownership of the present lot. It is unnecessary to go into the detail of this contention, I find against the defendants upon this ground.

And after all when there is possible ambiguity resulting from the fact that the description for one part does not seem consistent with another part, I do not think there is any general rule by which one can be guided. However, *ceteris paribus*, the reasonable conclusion which is more likely to accord with the real intention of the parties, should in preference be accepted. It seems that the Court must in every case do the best it can to arrive at the true meaning of the parties upon a fair consideration

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of the language used and the facts in evidence. I must, however, add that it is without any hesitation I come to the conclusion the obvious meaning and intention of the parties in question was to fix the southern boundary by the low water mark.

I therefore find that the Hearn Estate is the true owner of this property down to low water mark and is entitled to the compensation in respect thereto.

The net revenues derived from the dwelling upon this lot has been in 1910-11, $75.80 and in 1914-15 $157.00.

Having so found, there now remains the question of ascertaining the quantum of the compensation in respect of this lot down to low water mark and the damages resulting from the expropriation in connection with the balance of the property held in unity by the said Estate. Following the mode of valuation adopted at trial, the compensation will be hereafter fixed for lots 2402, 2403, 2404, 2409 and 2410 at the one and same time. And for the reasons mentioned herein, is respect of Lot 2376, the compensation will extend to the end of the wharf in the manner hereinbefore set forth in respect of the other lots.

Assessment of Lots 2402, 2403, 2404 2409 and 2410.

The area for which compensation is hereby made in respect of each of these lots, is as follows, viz:—

	sq. ft.
Area taken to low water mark on all these lots.	12,749
Area between low water mark to red line of first expropriation on all these lots.....	1,592
Lot 2402, Area from said red line to end of wharf.....	544
Lot 2403, Area from said red line to end of wharf.....	182

	sq. ft.
Lot 2404, Area from said red line to end of wharf	840
Lot 2404, Area from end of wharf to Commissioners' southern line	7,282
Lot 2409, Area from said red line to end of wharf	704
Lot 2410, Area from said red line to end of wharf	1,640
Lot 2410, Area from end of wharf to Commissioners' southern line	6,100
Total area	31,633

On these several lots, there are 4,079 cubic yards of wharves.

As already mentioned, the Crown in expropriating the right of way for the National Transcontinental Railway, has taken all the land belonging to the defendant on the river side of the northern line of the said right of way, leaving the defendant with a certain piece or parcel of land on the northern side of the right of way to Champlain Street. On this piece of land so left to the defendant, as part of each of these lots, are dwelling houses with small yards at the back, as will be seen by referring to plan Exhibit No. 3.

The revenue derived from such residential buildings has already been referred to under the separate head of each lot.

The restricted area left to the defendant in connection with these properties and the damages resulting from the expropriation in respect of the buildings, such as the decrease in their value, the difficulty in renting the same and all other elements of damages resulting from the close proximity of the railway,

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will also be assessed and compensation made therefor to the defendant.

As already mentioned, I have had the advantage accompanied by counsel, of visiting and viewing the premises in question, and after giving due consideration to the evidence and to all the circumstances of the case, I have come to the conclusion to fix as a fair and liberal compensation the sum of $56,396.83 in respect of the said lots 2402, 2403, 2404, 2409 and 2410. This amount to cover the value of the land so taken, as parts of the said lots, the wharves, all riparian or other rights of every kind whatsoever, together with the damages to the balance of the property remaining in the hands of the Hearn Estate. This amount, however, is to be paid to the said Estate, upon giving to the Crown a release of the capital, rents and interest remaining due to the Quebec Harbour Commissioners under the several grants or sales in respect of the said lots. Failing the production of such release, the capital of the said rents, with all arrears and interest are to be paid the Quebec Harbour Commissioners and then the balance paid over to the Hearn Estate.

Interest.

There were, in this case, two expropriations, of distinct and separate pieces or parcels of land, made at two separate and distinct dates, namely on the 8th November, 1913 and on the 30th November, 1915.

It would be somewhat intricate and difficult to separate the several areas to be allowed, in respect to all the lots expropriated herein, under each expropriation and would involve further detailed measurements.

And furthermore, in view of the fact that under the first expropriation, the damages to be paid in respect of the lands expropriated on the second date, would have been practically the value thereof,— and with the further object of making the compensation more liberal, I will allow interest upon the total amount recovered from the date of the first expropriation, namely, the 8th November, 1913.

Claim of the City of Quebec.

The City of Quebec, as mentioned at the beginning of these reasons for judgment, has filed a plea whereby they leave the matter of their interests in the hands of the Court.

Under Article 2213 C. C., the roads leading to the sea or a navigable river are not subject to prescription.

Pursuant to the plea filed by the City of Quebec, the following agreement has been filed reading as follows, viz:—"The plaintiff and the City of Quebec, "one of the defendants, hereby agree that the said "city shall have the right to cross with its fire ap- "paratus over the tracks on that part of the property "marked 104A and 104B and 109A and 109C, on the "plan deposited and filed on the 29th November, "1915, in this case and shall also have the right to "pass its fire hose under the tracks on the said pro- "perty in all cases of fire where necessary."

It is found in this case that the City of Quebec is proprietor of the small lane marked 110E, and the two streets marked respectively 109A and 104B, and the compensation in respect of the same should be paid to them.

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These streets or lanes were used by the public and the adjoining proprietors and they are still available down to the northern line of the expropriated right of way.

The matter of the compensation for the expropriation of such street having been left by the City of Quebec, to be determined by the Court without adducing any evidence and the Crown having acquiesced in this course,—there now remains the question of fixing the amount of the compensation.

While the undertaking above recited is a substantial advantage given to the city, it is found it does not cover all the city is entitled to,—over and above the several advantages derived fron the undertaking, the City of Quebec is further entitled to receive from the Crown the sum of $600.00 with interest and costs.

The Quebec Harbour Commissioners' Claim.

These claimants have filed a plea setting forth what area they claim upon this water front, on the Harbour of Quebec, in connection with this expropriation, as hereinbefore set forth.

They have accepted the amount tendered by the Crown.

There is no occaiosn to make any pronouncement upon the rights of these defendants as between themselves and the Crown in respect of such land in view of what has been said by their counsel in the course of his argument. This is a matter which will be adjusted between these two parties.

There will be no costs to any of the parties herein on this issue.

The Quebec Harbour Commissioners will however be entitled to recover the capital, and the arrears,

if any, of rents and interest mentioned in both the Crown Grants and the Quebec Harbour Commissioners' Deeds of Sale, under which the Hearn Estate are claiming, as hereinafter set forth.

Therefore, there will be judgment as follows, viz:—

1st. The lands expropriated herein are declared vested in the Crown as of the respective dates of expropriation, namely, of the 8th November, 1913 and the 30th November, 1915.

2nd. The compensation for all the lands so taken, and for all damages whatoever resulting from these two expropriations is hereby fixed at the sum of $133,796.03, with interest thereon from the 8th November, 1913, to the date hereof.

3rd. The defendants, the Estate Hearn, are entitled to be paid and recover from the plaintiff the sum of $133,196.03 with interest thereon from the 8th November, 1913, upon giving to the Crown a release of the capital, rent and interest due the Quebec Harbour Commissioners, under the several Crown Grants and Deeds of Sale referred to herein and affecting the said properties; furthermore, upon giving to the Crown a good and sufficient title free from all hypothecs, mortgages, rents and incumbrances whatsoever upon the said properties.

Failing by the said Hearn Estate to give a release of all incumbrances, the same shall be first discharged and paid out of the said compensation moneys and the balance of the moneys be paid over to the said Hearn Estate.

4th. The Corporation of the City of Quebec is declared entitled to the several casements and servitudes mentioned in the undertaking given by the Crown and further is entitled to recover from the

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plaintiff the said sum of $600.00 with interest thereon from the 30th November, 1915 and costs.

5th. The defendants, the Estate Hearn, are entitled to their costs on the issue with the plaintiff.

6th. There will be no costs to any of the parties herein on the issue with the Quebec Harbour Commissioners.

Judgment accordingly.

Solicitors for the plaintiff:
Gibsone & Dobell.

Solicitors for the defendants:
Pentland, Stuart, Gravel & Thompson.

Solicitors for the City of Quebec, added defendant:
Chapleau & Morin.