

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

1902
Nov. 17.

AND

THE TURNBULL REAL ESTATE COMPANY, LEVI THOMPSON AND GEORGE A. THOMPSON.. } DEFENDANTS.

Expropriation of land—Prospective value for purposes other than present use—Assessed value.

Where lands at the time of the expropriation had a prospective value for residential purposes beyond that which then attached to them as lands used for farming or dairy purposes such prospective value was taken into consideration in assessing compensation.

2. In assessing compensation in this case the court looked at the assessed value of the lands, not as a determining consideration, but as affording some assistance in arriving at a fair valuation of the property taken.

INFORMATION for the expropriation of certain lands situate in the City of St. John, N.B., required for the purposes of a Rifle Range.

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

May 22nd, 23rd and 26th ; June 2nd, 1902.

The case was tried at St. John, N.B.

September 25th, 1902.

The case was now argued.

E. H. McAlpine, K.C., for the plaintiff.

Dr. Silas Alward, K.C., for the defendant company, cited *Cripps on Compensation* (1) ; *Guay v. The Queen* (2) ; *Cowper Essex v. Local Board for Acton* (3) ; *Browne &*

(1) 4th ed. p. 153.

(2) 2 Ex. C. R. 18 ; 17 Can. S. C. R. 30.

(3) 14 App. Cas. 167.

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Allan on Compensation (1) ; Holt v. Gas Light and Coke Company (2).

J. L. Carleton, K.C., for the defendants Thompson.

THE JUDGE OF THE EXCHEQUER COURT now (November 17th, 1902), delivered judgment.

The information is filed to obtain a declaration that certain lands, mentioned therein, taken from the defendants, are vested in the Crown, and that a sum of five thousand four hundred and seventy-three dollars and twenty-two cents (\$5,473.22), which the Crown offers to pay therefor and for damages is sufficient and just compensation to the defendants. The block of lands, of which these in question here formed part, contained three hundred and forty-two acres. Of this block of lands a part containing about seventy-five acres was, at the date of the expropriation, under lease to the defendants, Levi Thompson and George A. Thompson, who were added as parties at the trial of the information. The Thompsons were farmers engaged in a dairy business, and they used the premises for the purposes of their business. They were in possession under a lease for a term of seven years from the first day of May, one thousand eight hundred and ninety-eight, at a yearly rent of three hundred and ten dollars. Of the lands demised to the Thompsons, the Crown, on the 1st of June, 1900, expropriated thirty-six acres and forty-eight hundredths of an acre, but they continued to occupy the premises without interference until April 7th, 1901, when they removed to another farm. By arrangement with the other defendant, The Turnbull Real Estate Company, they are to pay the full rent to the first of May in the present year (1902), and the company is to accept a surrender as of that date. No tender was made to the Thompsons, though it

(1) P. 117.

(2) L. R. 7 Q. B. 728.

appears that it was the intention of those who acted for the Crown that the sum of \$5,473.22, which was offered to The Turnbull Real Estate Company, should include all damages to which the Thompsons, as tenants, should be entitled. With regard to the offer it is said that the amount was made up on a wrong principle; but that obviously is not the issue. The question is: Was it sufficient?

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There is no great difference of opinion in this case as to the matters that should be taken into consideration in arriving at a conclusion as to the amount of compensation that should be awarded. First there is the value of the lands taken. Then with reference to the damages to other lands held therewith, such damages appear, so far at least as respects the reversion to which The Turnbull Real Estate Company was entitled, to be occasioned (1) by the severance of the lands and the practical isolation, for the present and until some arrangement can be made, of a portion of the lands; (2) by the depreciation in value of certain farm buildings not situated upon the lands taken for which there is now little or no use, as the premises can no longer be occupied for farming purposes; and (3) the depreciation in value of lands adjacent to those taken, resulting from the use of the latter for a rifle range? There is some difference of opinion as to whether lands are or are not depreciated in value by close proximity to a rifle range. I am of opinion that they are.

The principal matter of difference between the parties is the value of lands taken, at the time when they were taken. They were what I think may be correctly described as bottom lands. On each side of them are considerable hills. A brook called Newman's Brook runs through them and finds an outlet through a gorge or opening in the hills. Up to

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the time of which we are speaking they had never been used for any purpose that would give them a greater value than they would have as agricultural lands, which appears not to have exceeded one hundred dollars an acre. A number of witnesses of character and intelligence who were examined were of opinion that the probabilities of these lands ever becoming valuable for any purpose except farming or market gardening, were so remote that at the time they were taken no value attached to them for any other purpose. On the other hand other witnesses of character and intelligence have testified that at the time they had a value greatly in excess of that mentioned by reason of their proximity to the portions of the City of Saint John that have been built on, and the probability of their coming into the market in the near future for building purposes. Probably the truth lies somewhere between the two extremes. It is very clear, and I agree, that the lands in the state in which they were at time when they were taken were not suitable for building residences upon; and that the situation was not at that time a desirable one for even small residences. But these are relative matters depending upon conditions that change from time to time. I have no doubt that the lands could have been drained and made fit and useful for the erection thereon of houses and other buildings. It was a question of expense and demand for building lots. And while I agree that the lands at the time had a value beyond that which would attach to them as lands to be used for farming or market gardening, I do not think the growth of the City of Saint John in their vicinity or neighbourhood has been such as to justify the view that in June, 1900, they were as a whole worth four hundred or five hundred dollars an acre, the value put upon them by some of the witnesses.

It is possible that a price such as that for a few acres not far removed from streets that had been built upon would not at the time have been very excessive; but such a price applied to the whole of the lands taken would have been—at least so it appears to me.

By reference to the evidence it will be seen that the whole property, containing three hundred and forty-two acres, was valued for assessment purposes at nine thousand dollars. I do not myself attach great importance to that. I have on one or two occasions, in dealing with cases such as that under discussion, found the values placed on lands for the purposes of assessment to be the full value of such lands. But generally speaking that is not the case. I always like to know in such cases the amount at which property is assessed for the reason that it affords something to keep one, when considering possibilities and probabilities and potentialities, from drifting too far from the actual and the real.

In the present case the amount of the assessment was I have no doubt very much under the actual value of the property as a whole; and it would be quite unfair to take it as a determining consideration in assessing the amount of compensation to which in this case the defendants are entitled. At the same time I do not think it at all likely or probable that the portion taken being less than forty acres out of three hundred and forty could really have been worth a sum approximating twice the amount at which the whole was assessed.

For part of the land taken, about twenty-four acres, I shall allow two hundred dollars an acre, and for the balance fifty dollars an acre. That, it seems to me, will be a liberal price, but under the circumstances fair. And I allow the sum of two thousand dollars to cover all damages, including those to which the

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Thompsons are entitled. From the best consideration I can give to the matter that sum appears to be sufficient, and at the same time not excessive. It is of course something that cannot be closely determined. At best one can only form an estimate.

The compensation to which the defendants are entitled is assessed at seven thousand four hundred and twenty-five dollars (\$7,425.00) with interest on one thousand dollars of that amount from the 7th of April, 1901, and on the balance from May 1st, 1902. The rate of interest will be six per centum per annum, as the cause of action arose before the passing of the Act by which that rate was reduced. Of the sum of seven thousand four hundred and twenty-five dollars mentioned, one thousand dollars, with interest from April 7th, 1901, will be paid to the defendants Levi Thompson and George A. Thompson, and the balance of six thousand four hundred and twenty-five dollars, with interest from May 1st, 1902, will be paid to the Turnbull Real Estate Company.

The defendants are entitled to their costs, which in the case of the Turnbull Real Estate Company will be limited to the issue as to the sufficiency of the offer made by the Crown.

In other respects the judgment will be entered as claimed in the information.

Judgment accordingly.

Solicitor for the plaintiff: *E. H. McAlpine.*

Solicitor for the defendant company: *Silas Alward.*

Solicitor for the defendants Thompson: *J. L. Carleton.*