

THE KING, ON THE INFORMATION OF THE ATTORNEY-
GENERAL OF CANADA,

1915
Nov. 18.

PLAINTIFF;

AND

MICHAEL WOODLOCK, OF ST. GABRIEL, COUNTY
OF QUEBEC,

DEFENDANT.

Expropriation—Agricultural land—Wood-lot—Water supply for cattle—Basis of valuation.

Compensation for the expropriation of a wood-lot is to be arrived at by seeking the market value of the same as a whole and as it stood at the date of the expropriation; not by calculating the profits which might be realized out of the sale of the timber upon the land.

2. In assessing compensation in the case of agricultural land, the fact that there is a small lake on the property, suitable for watering cattle and other general purposes, will be taken into consideration as an additional element of value in respect of its use for agriculture.

THIS was an information exhibited by the Attorney-General for the Dominion of Canada to have the value of certain lands, expropriated for the purposes of the "Valcartier Training Camp", determined by the Court.

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

The case was heard at Quebec before the Honourable Mr. Justice Audette on the 10th, 11th, 12th and 13th days of November, 1915.

G. G. Stuart, K.C., for plaintiff;

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

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AUDETTE, J. now (November 18th, 1915) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that certain lands belonging to the defendant were taken and expropriated, under the provisions of *The Expropriation Act* (R.S.C. 1906, c. 143) for the purposes of a public work of Canada, namely, "The Valcartier Training Camp," by depositing a plan and description of such lands, on the 15th September, 1913, and 31st August, 1914, in the office of the Registrar of Deeds for the County or Registration division of Quebec.

The defendant remained in possession of his property up to the 16th September, 1914.

The lands so expropriated are severally described in paragraph 2 of the information and are composed of a farm with buildings thereon erected and a wood-lot.

The title is admitted.

The Crown, by the information, offers for the farm, containing an area of 126 acres, with the buildings thereon erected, the sum of \$2,575., and for the wood-lot, containing an area of about 85 acres, the sum of \$425., making in'all for the two lots the sum of \$3,000.

The defendant by his amended plea claims the sum of \$15,250.40.

On behalf of the defendant, witness Gilfoy valued the farm, exclusive of buildings at the sum of \$4,920., and the wood-lot at \$1,800., the lake at \$1,500., and thought that the land upon the farm was worth \$30. an acre. Robert Hayes and John Corrigan value the farm at \$5,226. without buildings, adding that the land varied in quality for different area, together with \$1,000. for the lake and \$1,845. for the wood-lot. Morris King places a value of \$5,950. upon the farm,

exclusive of buildings, but inclusive of the lake which he values at \$1,500., and \$2,900. for the wood-lot. And James McCartney values the farm, exclusive of buildings, at the sum of \$5,226., and the wood-lot at \$1,800. There is also on behalf of the defendant evidence in respect of the lake and the buildings on the farm, together with the evidence of the defendant himself with respect to his loss and damage.

I may be permitted here to make a casual observation with respect to the defendant's evidence. It is this. Farmers when valuing a farm are in the habit of treating it as a whole, not separating the buildings from the land. An inflation of the true value of the land, *per se*, may very naturally result from this unusual method of valuation, which is a departure from the usual course.

On behalf of the Crown, witness Powell values the farm and wood-lot at \$3,000. This witness, who admits he has no experience in real estate, bases his valuation upon a list shewn to him and purporting to contain the prices at which certain properties in the neighbourhood had been sold but of which he had no knowledge. Witness John Jack, values the farm as a whole at \$3,000. to \$3,500., and the wood-lot at \$900, and the buildings upon the land at \$150. But taking the special circumstances of this case in consideration he would allow the sum of \$5,030. for the land and all damages. Witness Perry in the result, came to the same conclusion, and placed a value for the land and all damages at the sum of \$5,030. Col. William McBain values the farm in September, 1913, at the sum of \$2,800, but in view of the unusual and special circumstances of this case would put a value of \$4,500. for the farm, the wood-lot and all damages.

The lands in question became vested in the Crown on the 15th September, 1913, and the defendant was

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allowed to remain in possession until the 15th September, 1914. At four o'clock on the 14th September, 1914, he received notification that he had till six o'clock on the 15th to move out of his property, as artillery firing would take place on Wednesday, September 16th from 9 a.m. to 5 p.m. and that it was important he should move out, so as not to be within the fire zone. He moved out within the 26 hours. The notice, which is filed, as Exhibit "F", also states:—"We only require possession for a few weeks and if "you wish to return to the holding, arrangement can "be made to give you possession through the winter."

The defendant continued to retain possession of his property after September, 1913, put in his crops and in September, 1914, had only gathered part of his oats, vegetables and potatoes. On receipt of the last notice, he cut his cattle loose, and vacated that property within the 26 hours left him. He claims having suffered thereby losses and damages with respect to his furniture, oats, vegetables in the ground, fowls and turkeys, that his cows, pigs and sheep went back and lost in weight when he came to sell, and the rent he is now paying for the house he occupies. He further claims for extra labour occasioned from the fact that his present residence is away from the farm, and in respect to his agricultural implements, which he says he cannot sell, they being second hand and the neighbouring farmers who might be purchasers being in the same plight as he is himself.

While the defendant is clearly entitled to damages in respect of his crops, his moving, etc., there is obviously a great deal of what he claims which does not constitute the legal elements of compensation—and no accurate or reliable accounts of his business have been produced.

However, for all damages suffered by him in respect of his crops, moving, etc., I will allow the sum of \$1,000. (1)

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With respect to the value of his farm, very conflicting evidence has been adduced. However, upon taking in consideration the unusual and special circumstances of the case, the Crown's witnesses increased their valuation in such a manner that it makes it possible to reconcile the evidence as a whole, notwithstanding the numerous purchases made by the Crown of some of the neighbouring properties for sums very much lower.

The defendant's farm is an average farm in Valcartier with also average buildings. The soil is very sandy, and while some parts of the farm are fair, other parts are poor and covered with moss.

The defendant is rather advanced in age—he has lived on the farm all his life and his father lived there before him. Where, indeed, the property has thus been occupied by the owner as his home, and he has no need nor wish to sell, the compensation should be assessed on a liberal basis.

For the farm and the buildings thereon erected I will allow \$30 an acre, which is a high price for farms in that locality, making for the 126 acres, the sum of \$3,780.

Coming to the valuation of the lake, one must guard against being carried away by "fish stories" and bear in mind that the trout did not spawn in the Woodlock lake. But it must be admitted that such a lake, small as it is, with part of the Griffin lake, is of a most appreciable value on a farm, for watering cattle and other general purposes. Just as much as a small water-course or a well is very valuable on a farm. To the \$30 an acre already allowed, I will add \$4 an acre as representing the additional value given to the farm by these two lakes, amounting to the sum of \$504.

(1) *The King v. Thompson*, 11 Ex. C.R. 162.

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Coming to the valuation of the wood-lot, it must be stated *in limine* that much of the evidence adduced in this respect—all of the defendant's evidence—has been upon a wrong basis, upon a wrong principle. It is indeed useless to juggle with figures and measure every stick of wood upon the lot, estimate the number of cords of wood upon the same, and upon that basis estimate the profits that can be realized out of the lot, to fix the value of the same according to such profits. In other words, it would mean that a lumber merchant buying timber limits would have to pay to the owner of the limits as the value thereof, the value of land together with all the foreseen profits he could realize out of the timber upon the limits. In the result leaving to the purchaser all the labour and giving all his prospective profits to the owner of the limits. Stating the proposition is solving it, because it is against common sense and no man with a slight gift of business acumen would or could become a purchaser under such circumstances.

What is sought in the present case is the market value of such a wood-lot, as a whole, as it stood at the date of expropriation.(1) A deal of evidence has been adduced in that respect, and while I think a lot of that kind is not worth more than \$200. to \$500., I have evidence on behalf of the Crown, which induced me to allow the sum of \$900. together with the sum of \$150. for the buildings thereon erected.

In recapitulation, the assessment of the compensation is as follows:

(1) *The King v. Kendall*, 14 Ex. C.R. 71 (confirmed on appeal to the Supreme Court of Canada); *The King v. The New Brunswick Railway Co.*, 14 Ex. C.R. 491.

For the farm, and the buildings thereon erected, an average price of \$30, an acre for 126 acres.....	\$ 3,780.00
The lakes, an additional value of \$4 an acre upon the whole farm, i.e.	504.00
The damages to the crops, etc., and in moving, etc.....	1,000.00
For the wood-lot.....	900.00
The buildings on the wood-lot.....	150.00
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	\$ 6,334.00

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To this amount should be added 10% for compulsory taking—the defendant neither needing nor wishing to sell... 633.40

Making in all the sum of.....\$ 6,967.40 with interest thereon from the date at which the Crown took possession, namely, the 16th September, 1914.

Under the proper appreciation of all the circumstances of the case, it is thought that \$6,967.40 is an amount representing a very liberal, fair and just compensation to the defendant.

It would be wrong to be carried away with the impression that the defendant has not been properly treated by the authorities. Indeed, there would go to mitigate against his extravagant claim and the alleged feeling of annoyance for want of considerate treatment the obvious fact that the defendant has been allowed to remain in possession of his property until some time in August, 1914, although his property had been expropriated in September, 1913, and that he was still in possession on the 15th September, 1914. He was at that time quite aware, he admits, that the camp was in operation and that he expected to move any day. He was again reminded at the end of August, 1914, as

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appears by Exhibits 3 and 4, that his property had been expropriated and that it was required for the camp. The advisement to remove on short notice he received in September was by no means a first notice, nor was it given in a harsh or inconsiderate manner. Quite to the contrary it is intimated to him that his property is required for a few weeks for artillery practice, and that if he wished to return to his holding arrangement can be made to give him possession through the winter.

Then properties have been acquired in the neighbourhood for camp purposes at prices which by comparison go to make the defendant's claim obviously extravagant. Moreover, it must not be overlooked that we are now living in a time of war and that the duty cast upon the State to train its soldiers within as short a time as possible is a duty which is clearly paramount to all other interests.

There will be judgment as follows, to wit:

1. The lands and real property expropriated herein are declared vested in the Crown, as of the 15th September, 1913.

2. The compensation for the lands and real property so expropriated, with all damages arising, or resulting from the said expropriation are hereby fixed at the sum of \$6,967.40, with interest thereon at the rate of five per cent. per annum from the 16th September, 1914, to the date hereof.

3. The defendant is entitled to recover and be paid by the plaintiff the said sum of \$6,967.40 with interest as above mentioned, upon giving to the Crown a good and sufficient title, free from all incumbrances whatsoever, the whole in full satisfaction for the lands taken and all damages resulting from the said expropriation.

4. The defendant is also entitled to the costs of the action..

Judgment accordingly.

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Solicitors for plaintiff: *Pentland, Stuart, Gravel & Thompson.*

Solicitors for defendant: *Taschereau, Roy, Cannon, Parent & Fitzpatrick.*
