

THE KING on the information of the Attorney-General of Canada

1912

PLAINTIFF; Feb. 14.

AND

THE MONCTON LAND COMPANY, LIMITED,
AND NAPOLEON J. GOVANG AND PACIFIC
D. BREAU

DEFENDANTS.

Expropriation of land—Compensation—"Prospective Capabilities"—Market Value.

In assessing compensation for lands taken for the purposes of a public work, *prima facie* the market price governs, but the "prospective capabilities" of the property must be taken into account. Usually such capabilities form an element in fixing the market price.

Brown v. The King (12 Ex. C. R. 463) followed.

INFORMATION filed by the Attorney-General for Canada for the expropriation of certain lands in the City of Moncton for the purposes of the Inter-colonial Railway.

October 24th, 25th, 26th and 27th, 1911.

The case came on for trial at St. John, N.B.

H. A. Powell, K.C. and *J. Friel* for the Crown;
W. Nesbitt, K.C., M. G. Teed, K.C. and *G. L. Harris* for the defendant company.

C. W. Robinson for the defendant Breau.

Counsel for the defendants relied on *Lucas v. Chesterfield Gas and Water Board* (1); *Brown v. Mayor of Montreal* (2); *Davies v. James Bay Ry. Co.* (3); *Cowper Essex v. Local Board* (4); *Mayer on Compens-*

(1) (1909) 1 K.B. 16.
(2) L.R. 2 A.C. 168.

(3) 20 O.L.R. 534.
(4) L.R. 14 A.C. 153.

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sation (1); *Hudson on Compensation*(2); *Cripps on Compensation* (3); *Brown and Allen on Compensation* (4).

CASSELS, J. now (February 14th, 1912) delivered judgment.

This is an information filed on behalf of the Crown to have the value of certain lands expropriated for the use of the Intercolonial Railway ascertained.

The lands expropriated comprise 11½ acres situate in the City of Moncton.

The trial lasted four days, and a great deal of evidence was adduced. Since the trial I have carefully analyzed the evidence. I do not propose to quote therefrom, as to do so would necessitate repeating a considerable part of it.

It is agreed that the date at which the expropriation took place and for ascertaining the compensation is the 23rd October, 1909.

There is not room for much dispute as to the method of arriving at the compensation.

The company, whose lands are expropriated, are entitled to be fully compensated for the loss they have sustained by reason of the exercise of the right of eminent domain. I have had occasion to express my views in *Brown v. The King* (5); and other cases. *Dodge v. The King* (6); is a guide. "Prospective capabilities" have to be taken into account. *Prima facie* the market price governs. Usually the prospective capabilities form an element in fixing the market price. In the present case the lands are situate in the city of Moncton. They were, before the expropriation, divided by plan into building lots, and I propose in dealing with

(1) 1903 ed. p. 140.

(4) (1903) 2nd ed. p. 97.

(2) Pp. 287, 308.

(5) 12 Ex. C. R. 463.

(3) 4th ed. p. 98.

(6) 38 S. C. R. 149.

the question of compensation to deal with them as such, although I do not think it of much consequence whether they were so laid out on a plan or not. The real point is what method of realizing would yield the best return. I know of a recent sale of land within three miles of a large city used as a farm which realized \$3500 an acre. The purchaser acquired the lands to be retailed on the market for building lots. There is no magic in a plan. In the case before me the lands in question were treated as building lots by the government valuators. The area taken by the railway comprised $11\frac{1}{2}$ acres. It was assumed at the time that this was equivalent to sixty-one and one-half lots.

It is hardly questioned that after the expropriation the best method of laying out the remaining lands north and south of the expropriated area is by laying out the two streets Essex and York running west to east as shewn on the plan. This method of utilizing the lands minimizes as far as possible the damage caused by the severance of the lands, and is, I think, in ease of the Crown.

There are said to be, as I have stated, sixty-one and a half lots expropriated. To the north there remain 289 lots; to the south 180 lots. Allowing for the cross streets Essex and York streets would each require 2.3 acres, or 4.6 acres for both.

Mr. Jones states, and it does not seem to be disputed, that allowing for streets of the width in question, each acre divides into $6\frac{7}{10}$ lots.

These 4.6 acres would yield 30.82 lots which have to be put into roadways. It was suggested at the trial by counsel that as Imperial Avenue which the Company intended to lay out would have been lost for building lots, therefore only one of the new streets should be allowed for, the other being in lieu of Impe-

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rial Avenue, and this seems to have been the view of all concerned. It no doubt would be correct on that understanding. On analyzing the evidence I find however that Mr. Taylor in arriving at the 61½ lots expropriated called the 11½ acres, has deducted the area comprised in the proposed Imperial Avenue, otherwise instead of there being 61½ lots there would be about 77 lots. I therefore propose to allow for the lots lost by the laying out of both York and Essex Streets one of the streets as mentioned having been deducted in reducing the 11½ acres to 61½ lots. The result is that the lands expropriated and the lands necessitated for streets amount to 61½ plus 30·82 lots, or about 92 lots.

The lands north of the expropriated land comprise 289 lots, from which must be deducted 15·41 lots taken for Essex Street, leaving 274·41 lots. The lands south of the expropriated land comprise 180 lots, and deducting 15·41 lots for York Street, leaves 165·41 lots.

It is difficult to arrive at an exact sum as the fair value of the damage. There is no doubt the damage to the property both north and south of the lands expropriated caused by the severance and the closing of the streets is considerable. The damage to those lots south of the expropriated land is not so great as to those on the north, nor is the damage to the lots either north or south equal to the damage to those nearer to the railway which necessarily suffer more than those more remote. The land company claims \$100,000; the Crown offers \$15,889.

The fact of the discovery of natural gas, and the works of the Transcontinental Railway, necessarily have to be considered. Moreover, it is apparent that some lots are more valuable than others.

I think I will be doing justice to all parties if I fix the value of the lots at \$175 on the average.

Taking 92 lots expropriated at \$175

would equal.....\$ 16,100

The injury to the lots north of the expropriated land, 274, averaging

them, I would place at \$20 a lot.. 5,480

The injury to those south (180 lots) averaging them, I would place at

\$15 a lot..... 2,700

\$ 24,280

If to this amount the sum of \$3,000 be added for compulsory expropriation and cost of grading one of the two cross streets and incidentals the total would amount to \$27,280, and this amount I allow to the company. Interest should be allowed on the \$16,100 and the company are entitled to their costs of action.

I had written my opinion several weeks ago, but have delayed delivering it until the undertaking offered by the Crown was settled upon and filed. This undertaking was filed today and should be embodied in the formal judgment.

I think if the defendant Breau be allowed \$150 for the land taken from him and the damage, he will be fully compensated, and I allow him his costs which I fix at \$50.

Judgment accordingly.

Solicitor for the plaintiff: *J. Friel.*

Solicitors for the defendant Company: *M. G. Teed.*

Solicitor for defendant Breau: *C. W. Robinson.*

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