

HER MAJESTY THE QUEEN.....PLAINTIFF;

1896

AND.

Jan. 20.

JOHN MURRAY, THE ELDER, MARY
 HOWISON, HANNAH EMS AND } DEFENDANTS.
 JOHN MURRAY, THE YOUNGER.... }

Expropriation—Temporary enhancement in value of lands—Compensation—Interest.

The temporary enhancement in the value of lands by reason of their being adjacent to the site of a projected railway terminus which had been abandoned, was not taken into consideration by the court in assessing compensation under the 31st section of *The Exchequer Court Act* (prior to its amendment by 54-55 Vict., c. 26, s. 37) for the expropriation of such lands.

2. Where the Crown has gone into possession of lands sought to be expropriated for the purposes of a public work, interest upon the sum awarded as their value may be computed from the date of entering into possession, notwithstanding the fact that the Crown may not have acquired a good title to the lands until a date subsequent to that of such entry into possession.

THIS was an information for the expropriation of certain lands near Port Moody, B.C.

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

The case was tried at Vancouver, B.C., on the 17th day of September, 1895.

Wilson, Q.C., for the plaintiff;

Corbould, Q.C., and *Gray*, for the defendants.

THE JUDGE OF THE EXCHEQUER COURT now (20th January, 1896) delivered judgment.

The information herein is exhibited under the provisions of *The Expropriation Act*, in respect of lands taken for the Canadian Pacific Railway, at Port Moody on Burrard's Inlet, in the province of British Columbia. The

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only question to be determined is the amount of the compensation to which the defendants are entitled. The Crown has tendered to the defendants the sum of \$27.29 as sufficient compensation for the land expropriated, and for damages arising therefrom. The land had, prior to the taking, been laid off into town lots, and a plan of the subdivision duly registered. That plan or subdivision was followed in the description of the land expropriated, and in the tender. The price of the lots appears, however, to have been based upon a value of the land per acre estimated at ten or eleven dollars, and without taking into account the prospective capabilities of the property arising from its situation and character, or the damages occasioned by severance or by the construction of the railway. These clearly are elements to be taken into consideration.

The defendant, John Murray, the elder, claims compensation in the sum \$6.050.00 for the price of eleven town lots at \$250.00 each, and for 2.64 acres at the rate of \$1,250.00 an acre. The 2.64 acres represent portions of certain streets shown on the plan which have been crossed by or taken for the railway, and he also claims damages in addition for severance and for the diversion of certain streams that were upon the property. The other defendants claim compensation at similar rates for lots taken or injuriously affected. There can, of course, be no doubt that the defendants are entitled to the value of the lands taken and for damages arising from or incident to severance and the construction of the railway, which in the case of the defendant John Murray, the elder, would include the damages occasioned by the diversion of the streams, of which he complains. The difficulty lies in estimating aright such values and damages.

The lands in question were taken under the provisions of *The Government Railways Act, 1881*, by the 16th

section of which it was provided that the Arbitrators should consider the advantages as well as the disadvantages of any railway, as respects the land or real estate of any person through which the said railway passes, or to which it is contiguous, or as regards any claim for compensation for damages caused thereby; and that they should, in assessing the value of any land or property taken for any railway, or in estimating and awarding the amount of damages to be paid to any person, take into consideration the advantages accrued or likely to accrue to such person or his estate, as well as the injury or damages occasioned by reason of such work. That provision was re-enacted in *The Revised Statutes*, chapter 40, section 15, and in the 31st section of *The Exchequer Court Act* (1); and was considered in this court in the case of *The Queen v. Carrier* (2), in which it was held that the advantages to be taken into consideration were such as were special and direct, and not the general benefit or advantage shared in common with other estates. The provision has since been amended so that both special and general advantage accrued or likely to accrue from the construction or operation of the public work are to be taken into consideration. (54-55, Vict., c. 26, s. 7.) I mention the amendment only to add that it has not, I think, any bearing upon the present case, which is to be decided upon the law as it stood when the lands were taken. In the values which the defendants place upon the lands taken and those injuriously affected, as attaching to them in 1882, or 1885 (and it is not important in this connection which date be taken) there is undoubtedly one element, and a large element, of value arising from the selection or supposed selection of Port Moody as the terminus of the Canadian Pacific Railway; and that is

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(1) 50-51 Vict., chap. 16.

(2) 2 Ex. C. R. 36.

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an element which must, I think, be taken into consideration under the statute then in force, (1), not in the present case in reduction of the compensation to which the defendants would otherwise be entitled, but so as not to include it as an element that would increase the amount of such compensation. While all fair prospective capabilities of the property arising from its situation and character ought to be taken into account and included as elements of value, the particular value that attached to the property during the time that it was thought that Port Moody would be the terminus of the railway, and attached by reason of that belief, ought not to be so included.

Then there is another element in the claim of John Murray, the elder, which I think should not be taken into account, at least in the form in which it is presented. He claims for the value of the streets laid off on his plan, that have been taken for or crossed by the railway. A like question also arose in *Paint's* case, to which I have referred, and it was there held on the authority of *Stebbing v. The Metropolitan Board of Works* (2) that the owner of the land through which the way or street ran was not in such a case entitled to compensation for the portions of the street taken. If his property were injured by the destruction of the way or street, that in a proper case might of course be a matter for compensation.

A question is raised as to whether the lands were taken in 1882 or 1885. It is not of any importance as bearing upon the rights of the defendants to compensation, as it is admitted that they are entitled in respect of the lands claimed by them respectively. Neither is it material to the question of interest, for whether the Crown had or had not in 1882 acquired a good title to

(1) *Paint v. The Queen*, 2 Ex. C. R. 149; 18 Can. S. C. R. 718. (2) L. R. 6 Q. B. 37.

the lands taken, it was in possession of them, and that is, I think, sufficient to justify the allowance of interest from that date. The question was raised on behalf of the defendants as having a bearing on the question of the amount of compensation. But in the view which I take of the case that is not material. There is nothing to lead one to conclude that so far as concerns any value of the lands that may properly be taken into account, there was any increase in value between the years 1882 and 1885. The sales show no doubt considerable advances in prices of lots, but such advances were occasioned wholly, I think, by the belief entertained that Port Moody was to be the terminus of the Canadian Pacific Railway.

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The compensation to be paid to the defendants is assessed as follows:—

To John Murray, the elder, \$700.

To John Murray, the younger, \$250.

To Hannah Ems, \$150.

The lot for which Mary Howison claims is not, so far as I see, mentioned in the information, but the information may, if necessary, be amended to include it, and for the portion thereof taken, and for damages, she may be allowed \$30. To the sums mentioned will be added interest from the sixth day of September, 1882. The defendants are, I think, entitled to their costs. In other respects the judgment will follow the usual declaration in cases of this kind.

Judgment accordingly.

Solicitors for the plaintiff: *Wilson & Campbell.*

Solicitors for the defendants, John Murray, sr., and Mary Howison: *Corbould & McColl.*

Solicitor for the defendants, Hannah Ems and John Murray, jr.: *W. M. Gray.*