

1916
April 22.

HIS MAJESTY THE KING, ON THE INFORMATION
OF THE ATTORNEY-GENERAL OF CANADA,
PLAINTIFF,

AND

WILBROD and GEORGE JALBERT,
DEFENDANTS,

AND

THE QUEBEC HARBOUR COMMISSIONERS,
ADDED DEFENDANTS.

Expropriation—Compensation—Interference with business—Good-will.

In awarding compensation for the compulsory taking of land by the Crown, a fair allowance will be made in respect of the interference with the owner's business as a going concern, small as the good-will of such business may be.

INFORMATION for the vesting of land and compensation therefor in an expropriation by the Crown.

Tried before the Honourable Mr. Justice Audette, at Quebec, December 1, 2, 3, 1915.

G. F. Gibsone, K.C., and *A. C. Dobell*, for plaintiff.

G. G. Stuart, K.C., for defendants.

AUDETTE, J. (April 22, 1916) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that certain lands, belonging to the defendants, were taken and expropriated, under the authority of 3 Ed. VII., ch. 71, for the purpose of the National

Transcontinental Railway, a public work of Canada, by depositing a plan and description of the same, on November 8th, 1913, with the Registrar of Deeds of the Registration Division of Quebec.

While the plan and description were deposited on November 8th, 1913, the Crown took possession on October 26th, 1913.

The defendants' title is admitted.

The Crown by the information, offers the sum of \$21,757.75 for the lands taken, and the defendants claim the sum of \$55,827.

This property, situate on Champlain Street, in the City of Quebec, is composed of a building on that street, an extension and another building at the back. All of them were built many years ago, and referred to and valued in detail by the witnesses for the respective parties. There is also on the water-front 716 cubic yards of wharf. The defendants at the date of the expropriation were carrying on a junk business in engines, etc., and used the wharf for the purposes of that trade and rented the house on Champlain Street. The access from Champlain Street to the wharf is somewhat disadvantageous in that it is through a narrow porch and upon land sloping at a considerable degree, making the approach to the wharf a detriment to the value of the water-front.

The only question involved in this case is that of the amount of the compensation to be paid the defendants; but to the value of the land and real property so taken there should be added a fair allowance made in respect of the interference with the defendants' business, as a going concern, small as the good-will of such a business might be, *The King v.*

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THE KING
v.
JALBERT
AND QUEBEC
HARBOUR COM-
MISSIONERS.

Reasons for
Judgment.

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 Reasons for
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*Rogers,*¹ *The King v. Condon,*² *The King v. Courtney.*³

I have had the advantage, accompanied by the counsel for the respective parties herein, of visiting and viewing the premises in question—and giving due consideration to the evidence and all circumstances of the case, I have come to the conclusion to fix the compensation as follows, viz.:

For the land taken, including the wharf in its state of repairs	\$12,000
For the buildings	12,000
For the interference with the defendants' business, a going concern at the date of the expropriation, interference with the good- will and for all riparian rights vested in the owners of the present property, the sum of	2,000
	\$26,000
To which should be added 10 per cent.	2,600
for the compulsory taking, and all other incidental expenses to the expropriation, such as moving out, etc.	
	\$28,600

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

1st. The lands and real property expropriated herein are declared vested in the Crown as of October 26th, 1913.

2nd. The compensation for the land and real property so taken, and for all damages resulting from

¹ 11 Can. Ex. 182.

² 12 Can. Ex. 276.

³ 16 Can. Ex. 461, 27 D.L.R. 247.

the expropriation, is hereby fixed at the sum of \$28,600, with interest thereon from October 26th, 1913, to the date hereof.

3rd. The defendants, Wilbrod and George Jalbert, are entitled to recover from and be paid by the Crown the said sum of \$28,600, with interest as above mentioned, upon giving to the Crown a good and sufficient title, free from all hypothecs, mortgages, charges or encumbrances whatsoever upon the said property.

4th. The said defendants are also entitled to their costs.

Judgment accordingly.

Solicitors for plaintiff: *Gibson & Dobell.*

Solicitors for defendants: *Pentland, Stuart & Co.*

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