

BETWEEN

HIS MAJESTY THE KING PLAINTIFF;

1907
April 22.

AND

WM. STAIRS, SON & MORROW DEFENDANTS.

Expropriation—Claim for damages for business—Claim for depreciation of value of machinery—Compensation.

Where the whole property is taken and there is no severance the owner is entitled to compensation for the land and property taken, and for such damages as may properly be included in the value of such land and property. He is not entitled to damages because such taking injuriously affects a business which he carries on at some other place.

2. Defendants, in expropriation proceedings, at the time their premises were taken had them fitted up as a boiler and machine shop. The machinery was treated as personal property by the defendants and sold for less than it was worth to them when used for such purposes.

Held, that they were entitled to compensation for the depreciation in value of the machinery by reason of the taking of the premises where it had been in use.

THIS was a proceeding by information at the suit of the Attorney-General of Canada to expropriate certain lands required for the purposes of the Intercolonial Railway of Canada.

The facts are stated in the reasons for judgment.

January 19th, 1907.

The case was heard at Halifax.

R. T. MacIlreith and *C. F. Tremaine* for the plaintiff;

F. H. Bell for the defendants.

THE JUDGE OF THE EXCHEQUER COURT now (April 22nd, 1907), delivered judgment.

The information is filed to obtain a declaration (1) that certain lands and premises therein described situated in

1907
 THE KING
 v.
 STAIRS.
 Reasons for
 Judgment.

the City of Halifax and taken for an extension of the Intercolonial Railway, are vested in His Majesty the King; and (2) that \$7,000 is sufficient and just compensation for such lands and premises, and for all claims in respect of any loss or damage sustained by the defendants or to be sustained by them by reason of the entering upon, taking possession and expropriation of the same, as stated in the information.

The defendants deny the sufficiency of the compensation tendered. They say in substance that the lands taken were worth the amount offered and they claim in addition thereto:—

(1) The sum of two thousand dollars as loss or damage sustained upon the sale of a quantity of machinery which was upon the said premises, suitable for the use of a boiler and machine shop, which they were unable to remove to any other place and which they sold at auction at a price, it is alleged, much below its value to them; and

(2). The sum of five thousand three hundred dollars for loss sustained in their business of dealers in iron and steel plates and other materials by reason of the discontinuance of the business which their tenants carried on the said premises.

The premises were fitted up as a boiler and machine shop, and at the time the lands were taken were in the occupation of Ferguson & Cox, boiler makers and machinists and general repairers, at a nominal rent; and on the understanding, or as Mr. Stairs puts it, on “an unwritten agreement that practically all they needed “they would buy from ” the defendants’ warehouse. Then the defendants estimate their sales to Ferguson & Cox at an average of \$2,878 per annum, and they say that their profit on this would be fifteen per centum net, making a yearly profit of \$530, which they capitalize at ten per centum, making the amount of \$5,300 claimed.

Now, what the defendants are entitled to in a case of this kind where the whole property is taken and there is no severance, is compensation for the land and property taken, and for such damages as may properly be included in the value of such land and property. They are not entitled to damages because such taking injuriously affects a business which they carry on at some other place. But even if it were otherwise, it was not the lands and premises taken from the defendants that of themselves earned the \$530 per annum that they claim as profits on the business done with Ferguson & Cox. There were other elements, such as capital employed and their business enterprise and activity. In lieu of the profits mentioned, which constituted all the benefit derived from the lands and premises taken, the defendants will now have for all time the interest on the sum awarded therefor. And in my view they will in this aspect of the case be better off with \$7,000 in hand than they were formerly with a property for which with all the machinery therein they could not get more than a nominal rent and a parol undertaking that the tenants would deal with them.

With regard to the other item of loss alleged, there is greater difficulty. The machinery on the premises in question was personal property. At least it was treated as such and was removed and sold. The Crown did not take it, but its value was lessened by reason of the taking of the premises where it had been used. Indirectly, if not directly, compensation may, I think, be given for a loss of that kind. The fact that the defendants had this property fitted up as a boiler and machine shop made it more valuable to them than it otherwise would have been, and that matter may, I think, be taken into account in assessing the value of the lands and premises taken. Because the premises were fitted up with machinery which could be used there but for which the

1907
 THE KING
 v.
 STAIRS.
 ———
 Reasons for
 Judgment.
 ———

1907
THE KING
v.
STAIRS.
Reasons for
Judgment.

defendants had no other use, the premises were worth more to them than they otherwise would have been worth.

Mr. Read and Mr. Duggan, the Government valuers, put the value of the property at \$6,000, and that of certain foundations for machinery at \$500. This valuation was, I think, a liberal one, but it was intended to represent the actual value apart from the fact that the premises were fitted up as a boiler and machine shop, and without considering the use to which they were put, at the time of the taking, and that by the taking the defendants would be left with a lot of machinery on their hands for which they would have no use.

In my view a sum of \$7,500 will cover fully the actual value of the lands and premises taken and any damages the defendants are entitled to in connection with such taking.

There will be the usual declaration as to the vesting of the lands, and that the defendants are entitled to compensation in the sum of \$7,500, with interest from the 26th day of January, 1906.

With regard to costs, the only issue was as to the sufficiency of the amount of compensation offered; and as to that the defendants succeed in part in respect of one of the two contentions made by them, and fail as to the other. There will be no costs to either party.

Judgment accordingly.

Solicitors for plaintiff: *R. T. MacIlreith.*

Solicitor for defendant: *F. H. Bell.*
