BETWEEN

1920
6th July.

THE KING, ON THE INFORMATION OF THE ATTORNEY-GENERAL OF CANADA..... PLAINTIFF;

AND

THE HALIFAX GRAVING DOCK COMPANY, LIMITED, A BODY CORPORATE, THE RIGHT HONOURABLE THOMAS BARON DENMAN AND SAMUEL MACKEW. DEFENDANTS.

War Measures Act—Expropriation Act—Effect of Order in Council amending same—Depreciation — Compensation — Statutory Discretion of Minister.

By Order in Council of 27th May, 1918, the Minister was authorized to offer defendants for their graving Dock, as it stood, the sum of $1,100,000.00 and upon offer being refused, he was authorized "pursuant to the powers conferred by the War Measures Act, 1914 and all other powers vested in your Excellency in Council," to take possession thereof and to expropriate the same, and have compensation fixed by the Court.

By another Order in Council, the Expropriation Act was, during the war, enlarged and amended under the provisions of the War Measures Act permitting the expropriation of personal property "as fully and effectually to all intents and purposes as if the same were specified as included in the definition of land under the said act." The lands herein were taken and expropriated by the Crown under the authority of the Expropriation Act for reasons arising out of the war, and pursuant to the powers conferred by the War Measures Act.

Held: That it is abundantly clear on the face of Order in Council enlarging and amending the Expropriation Act that the Governor in Council only intended to augment the powers of the Crown in respect of taking property for public purposes during the war, under the War Measures Act, and had no intention to abridge any of the powers of the Crown under the Expropriation Act.

2. Where, in an Order in Council authorizing the expropriation of property by the Crown, reference is made to the statute (War Measures Act) in pursuance of which the same purports to be made, and where the authority to act under said statute is questionable, but the same property could unquestionably be expropriated and taken under the general Expropriation Act, the court may treat the proceedings as taken under the latter act, notwithstanding the said reference in the Order in Council; especially, as in this case, the Minister had, in the exercise of his statutory discretion, decided to so expropriate and all the requirements of the latter act have been complied with.

Attorney General *vs.* De Keyser's Royal Hotel, Ltd., (1920) 36 T.L.R. 600 referred to.

3. The Minister, under the statute, is the judge of the necessity or propriety for the taking over of the property and the Court has no jurisdiction to sit on appeal from such decision.

4. That in assessing the compensation for property of a commercial or industrial company, due consideration must be given to the history of the company from its origin, such as how organized, its capital, how applied and financed, the business carried on, and actual profits, and in the present case (a dock) its age and state of repairs, and, while one must also examine the component parts of the Dock, the good will of the industry as a going concern, the compensation must be arrived at upon its commercial market value as a whole at the date of the expropriation, without being obliged, in arriving at such value, to go into abstract calculations with respect to each component part, but taking all of them as a whole after having weighed and considered each of them. The King. *v.* Kendall (1); The King *v.* The Carslake Hotel (2); and King *v.* Manuel (3) referred to.

INFORMATION exhibited by the Attorney General of Canada to have property expropriated by the Crown valued and compensation fixed.

Mr. W. N. Tilley, K.C., T. S. Rogers, K.C., and *W. L. Hall, K.C.*, Counsel for plaintiff.

Mr. McInnes, K.C., L. A. Lovett, K.C., and *J. S. Roper, K.C.*, Counsel for defendants.

This case was tried before the Honourable Mr. Justice Audette, at Halifax, on the 14th, 15th, 16th,

(1) 14 Can. Ex. C.R. 71; (1) 16 Can. Ex. C.R. 24;
(3) 15 Can. Ex. C.R. 381.

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17th, 18th, 19th, 20th, 22nd, 23rd and 24th days of June, 1920.

Mr. Lovett, K.C.—The Expropriation Act only authorizes the taking of land and real property. Under the War Measures Act an Order in Council was passed extending and enlarging the provisions of the said act to cover and include personal property as well; but this extension or enlargement was only effective for the period during the war.

The authority for expropriation is set out in the Information as follows:

(1) The *lands* herinafter described were taken, (*a*) Under the provisions and authority of Section 3 of the Expropriation Act, Cap. 143, R.S.C., 1906, by His Majesty; (*b*) For reasons declared to arise out of the present war; (*c*) Pursuant to powers conferred by War Measures Act, 1914, and other powers vested in His Majesty; (*d*) By depositing plan and description *under sections 8 and 9* of Expropriation Act of such lands in the Registry of Deeds.

It is further alleged that by the act of depositing plan and description the *said* lands became and are now vested in His Majesty. The lands described and claimed to be so vested are only 7.5 acres.

Under Order in Council, March 17th, 1917, it is provided that the Order in Council may contain a description specifying or describing with reasonable certainty by reference or otherwise all the property both real and *personal* intended to be taken and that a certified copy if deposited in the Registry will vest the lands in His Majesty or the description under the Expropriation Act can describe the property real and *personal* intended to be taken.

A certified copy of Order in Council P.C. 1291

has not been deposited. No description of property except land has been deposited in the Registry under Expropriation Act.

The Expropriation Act alone, or as extended by Order in Council, only authorizes the taking of property real or personal subject to all the provisions thereof, one of which provisions is that the taking can only be for a *public work*. There has been no description of any public work for which the property is taken. Consequently the Crown has not complied with the provisions of the Expropriation Act and is driven to seek refuge under the War Measures Act and the Order in Council P.C. 1291 as the authority pursuant to which the property is alleged to have been taken and to have been vested in His Majesty.

Order in Council P.C. 1291 must therefore be shewn to have been complied with by the Crown. (See Order in Council).

The Crown claims it became vested with the lands and property described in the information and descriptions filed on June 7, 18 and on June 21st, 1918. It produced as part of its case a tender of June 21-18 as follows:

"for the property of Deft. Company as described in amended plan and notice of expropriation filed June 21 1918, in Registry, under provisions of the Expropriation Act." The tender proceeds: "This offer is made in accordance with the provisions of an Order in Council of May 27th, 1918, and includes the said property as it now stands (June 21st, 1918) with repair shops and plant connected therewith and all work of reconstruction done up to the present (namely June 21, 1918)."

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The Crown was also permitted to reopen its case and produced a letter dated May 25th, 1919, from Mr. Carvell to defendant company stating he was authorized to expropriate Halifax Graving Dock and to offer $1,100,000.00. The Crown also put in a letter dated May 28th, 1918, from S. M. Brookfield, Chairman Defendant Company, to Mr. Carvell, declining the offer.

It is submitted that no offer has been made in compliance with the O. in C., P.C. 1921:—

(*a*) The tender was after deposit of expropriation plans and descriptions.

(*b*) Carvell's letter was before any authority was given, is manifestly incorrect in its statement as to his authority, and it is not an offer for the property as it stood at May 28, 1918, including all work of reconstruction done up to that date.

(*c*) No refusal by the Company of any offer has been proved. There was never any offer as prescribed by the Order in Council, made, and if there was such an offer the Chairman of the Company had no authority to refuse or accept. The undertaking of a Company cannot be disposed of without the resolution of its shareholders.

There has therefore been no vesting of any property of Defendant Company in His Majesty.

There is no allegation in the Information that the property attempted to be taken was, in the judgment of the Minister, necessary for the use, etc., of a public work. On the contrary the Information is based entirely on the taking of the property for reasons declared to arise out of the present war.

It may be argued that the deposit of the plan and description resulted in the land vesting in the Crown

as mentioned in Section -8 of the Expropriation Act. It is submitted that under the Expropriation Act it is a matter going to jurisdiction that,—

(*a*) the taking of the property shall be for a public work;

(*b*) the appropriation of the property is in the judgment of the Minister necessary for the use of a public work; and

(*c*) what is claimed to be the public work must be designated in clear terms. The Information, if the taking of the land is contended to be under the Expropropriation Act, must be set out and the evidence must prove these various facts before it can be held that the plan and description deposited vests any property in His Majesty.

In answer to any contention based on Section 11 of the Expropriation Act, it is submitted that the question of whether the plan and description have been deposited by the direction and authority of the Minister and the question as to whether the Minister exercised his judgment in deciding that the lands taken were necessary for the purpose of a particular public work, the Crown must prove these facts as a foundation for the jurisdiction exercised, and that the acts mentioned are only prima facie presumed to have the effect mentioned in Section 11 (See Sec. 21). If this were otherwise any surveyor could deposit a plan and description and the property would then vest in His Majesty, even though he had no authority and the Minister may never kave known anything about it. In such a case it could not be held that the lands vested in His Majesty when the plan and description were deposited, and it would be quite competent to

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prove the real facts and show there was no legal expropriation.

As to the validity of the alleged expropriation under the War Measures Act, it is submitted that same is not valid for the following reasons:

(1) Because the said Order in Council is void for uncertainty in that same does not indicate to whom authority is given to make the offer therein mentioned; nor does it indicate to whom authority is granted for the expropriation and direction and control of the property of the Defendant Company; nor for whom the property is to be expropriated; nor the purpose for which it is to be expropriated.

(2) Because there is no jurisdiction under the War Measures Act to make Orders in Council which would have any valid operation after the termination of the war.

Reference is made to the case of Price Bros. Limited, Supreme Court of Canada, and the references therein contained to the scope of the War Measures Act. The absolute expropriation of the Graving Dock was, we submit, not possible for the Governor-in-Council to order. This property could, of course, have been taken under the War Measures Act for the period of the war, and if the Order in Council is valid at all it is only valid to that extent.

It is quite true that the use of this property during the war might have been taken, that is the use for the government. But it could not, under this act, take for all time this property for another private concern for a period beyond the duration of the war. The War Measures Act reads "for the defence, security, etc., *and*" and not "*or*" and anything done under that act must be for all those things and for each one of them.

There are no valid proceedings before the Court and no valid expropriation, and the properties alleged to be expropriated are not now and never became vested in the Crown, not even the *lands*.

The balance of the argument deals with the valuation.

Mr. Tilley, K.C.

(*a*) The contestation of the validity of the proceedings was something never thought of by defendants, until November, 1918, and the company had by that time, even if there were irregularities, as distinct from things being absolutely void and without any foundation at all, waived its right to insist on compliance with the technical requirements and had accepted the situation, and had voluntarily turned over its property to the Government knowing that a company was to take the same under lease, and in fact dealt by preference itself with that company rather than with the government officers. In fact Mr. Brookfield was a willing vendor desiring to have his property taken and only asking that the compensation therefor be fixed by the Exchequer Court (numerous references are made to the correspondence in support of this view).

(*b*) The requisite of the Order in Council which required an offer of a million and quarter to be made before proceeding to actual expropriation, was complied with because the letter refusing the proposition was written on the 28th May, 1918, the day following the passing of the Order in Council, he being advised that the order in council was being passed. And the defendants having refused the offer made them under the Order in Council, the ground was clear for the Crown to go on with the expropriation proceedings.

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(*c*) That under this Order in Council on the 17th March, 1917, Exhibit "B", the Expropriation Act is deemed to be amended so that land has a broader significance.

(*d*) The Crown can proceed under those circumstances either by the old procedure fixed by the Expropriation Act, or by registering or depositing the Order in Council itself.

The facts are stated in the reasons for judgment.

AUDETTE, J. now (this 6th of July, 1920) 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 company, were taken and expropriated by the Crown, under the provisions and authority of The Expropriation Act, (Ch. 143, R.S.C. 1906), for reasons declared to arise out of the *present* war, and pursuant to the powers conferred by *The War Measures Act*, 1914, and other powers vested in the Crown,—by depositing of record, under the provisions of sections 8 and 9 of *The Expropriation Act*, in the office of the Registrar of Deeds for the County or Registration Division of Halfiax, N.S., a plan and description of the said lands, on the 7th June, 1918, together with a corrected plan and description thereof, on the 21st June, 1918.

The defendants, the Right Honourable Thomas Baron Denman and Samuel Mackew, by their answer to the Information, declared that "at the time of the filing of the Information herein they were trustees of certain indentures of trust whereby the lands and property of The Halifax Graving Dock Company,

Limited, described in the Information, were vested in them by way of mortgage for the purpose of securing debentures by the said defendants, the Halifax Graving Dock Company, Limited.

"That the said The Halifax Graving Dock Company, Limited, on the 31st of December, 1918, paid, redeemed and retired the debentures issued under said mortgage, and that these Defendants have executed a release of the said mortgage, and since the said 31st of December, 1918, they have had no property, estate or interest in the lands sought to be expropriated herein."

This indenture of release or reconveyance is also filed of record as Exhibit No. 46.

These two defendants are thereby eliminated, and we have now to deal only with The Halifax Graving Dock Company, Limited, as the defendants in the case.

The area expropriated, as mentioned in the information, is 326,200 square feet; the area claimed by the defendant is 328,294 square feet, and the area according to the Crown's evidence would be 325,100 square feet.

The defendant's title to the land above mentioned is admitted, but its claim to the land covered by water is denied. It further appears that the City of Halifax has a certain right to carry sewers across the property, at the head of the dock.

These two questions of area and title will be herein after mentioned and disposed of.

The Crown, by the amended information, offers the sum of $1,100,000, and the defendant company by its amended statement in defence claim the sum of $5,000,000.

The Expropriation Act above referred to, was during the war enlarged and amended under and in virtue of

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the provisions of The War Measures Act, 1914, and legislative effect thereto given by an Order-in-Council filed as Exhibit "B," and which may be found in the Statutes of 1914, p. cviii, wherein, among other enactments, the following is to be found, viz.:

"II). For the purpose of the compulsory taking, during and for any reason arising out of, the present war, of any property real or personal belonging or appurtenant to, or acquired, had, used or possessed in connection with any arms or munition factory, machinery or plant, or other factory, mills, machinery or plant whatsoever which is being operated as a going concern, The Expropriation Act shall, subect to all the provisions thereof, extend and apply not only to the taking and acquisition of the land, if any intended to be taken, but also to all buildings, fixtures, machinery, plant, tools, materials, appliances, supplies, goods, chattels, contract rights, accrued or accruing, choses in action and personal property of any description whatsoever possessed, acquired, had, owned, used, appropriated, or intended for use or consumption for, or in connection with or for any of the purposes of any such factory, mills, machinery or plant as aforesaid, or the operations or business theretofore carried on or intended to be carried on in or about or in connection with the same, and as fully and effectually to all intents and purposes as if the same were specified as included in the definition of land under the said Act."

It is also provided by the Order in Council that there shall be no allowance for compulsory taking.

The expropriation proceedings are attacked by the defendants, who contend they are null and void for want of authority to expropriate, a contention with which I am unable to agree; and the defendants on

entering upon their case and adducing evidence, did so reserve all their rights in that respect to hereafter set up such contention in another court, if they see fit.

It is abundantly clear on the face of the Order in Council, Exhibit "B," that there was no intention on the part of the Governor-in-Council in passing the same to do anything but exercise their right under The War Measures Act, 1914, to augment the powers of the Crown in respect of taking property for public purposes during the war. Under this Order in Council personal property became subject to the right of expropriation as well as real property. To do the other thing, i.e., to abridge any of the powers of the Crown under The Expropriation Act, would not be to their purpose, even if it could be argued to be within the powers of the Governor in Council under the War Measures Act. So that there is no occasion here to consider any question either of ouster of jurisdiction under pre-existing legislation or the repeal by implication of any of the provisions of such legislation enabling the Crown to take property. See Maxwell on the interpretation of Statutes, 5th Ed. Cap. vii.

Coming to this particular case, it was the undoubted intention of the Dominion Government to take the absolute right and title to the whole of this Graving Dock, plant and premises, in other words to expropriate the same. That is explicit on the face of the Order in Council of the 27th May, 1918, and the Attorney-General of Canada has taken the usual steps under the Expropriation Act, to effectuate that intention, by filing an information for expropriation in this court.

Some doubt may exist under the War Measures Act, 1914, as to whether the Crown under its provisions

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could "expropriate" the property of the subject in the plenary sense that it can be done under the first mentioned Act, as was suggested at bar—but, I am free to say that it is not necessary here for me to attempt to resolve that doubt. It is apparent that expropriation can be made, and has been made, under competent legislation that was in existence long before the War Measures Act referred to.

I am therefore relieved from entering upon any doubtful domain of statutory construction in order to decide that the defendant's property has been taken by due process of law.

The remarks of Lord Moulton in the appeal to the House of Lords of the case of *The Attorney-General* v. *De Keyser's Royal Hotel, Limited*, (1) are instructive where complete and satisfactory statutory powers can be relied on to govern a case before the court as against another more uncertain and unsatisfactory authority to do the act giving rise to the litigation. Lord Moulton says: "In deciding the issues between the Crown and the suppliants, the first question to be settled might in the present case, to his mind, be treated as a question of fact, viz., Was possession in fact taken under the Royal Prerogative or under special statutory powers giving to the Crown the requisite authority? Regarded as a question of fact, that was a matter which did not admit of doubt. Possession was expressly taken under statutory powers. The letter of May 1st, 1916, from the representative of the Army Council to Mr. Whitney said:—I am instructed by the Army Council to take possession of the above property under the Defence of the Realm Regulations. It was in response to that demand

(1) [1920] 36 T.L.R 600, at p. 609.

that possession was given. It was not competent to the Crown, who took and retained such possession, to deny that their representative was acting under the powers given to it by these regulations, the validity of which rested entirely on statute.

"It was not a matter of slight importance whether the demand for possession purported to be made under the statutory powers of the Crown or the Royal Prerogative. Even the most fervent believer in the scope of the Royal Prerogative must admit that the powers of the Crown were extended by the Defence of the Realm Consolidation Act, 1914, and the Regulations made thereunder. It was for that purpose that the Act was passed and the Regulation made. But even if that were so there was a manifest advantage in proceeding under the statutory power. It rendered it impossible for the subject to contest the right of the Crown to take the premises by the exercise of the powers given by the statute.

* * * * *

All such questions were put at rest by the Legislature giving express statutory authority by the Regulations. There could thenceforward be no doubt that the Crown possessed the powers formulated by the Regulations, and this was the object of the legislation. But when the Crown elected to act under the authority of a statute, it, like any other person, must take the powers that it thus used *cum onere*. It could not take the powers without fulfilling the condition that the statute imposed on the use of such powers."

The expropriation was made, as set forth in the information, for reasons declared to arise out of the "present war and pursuant to the powers conferred by the War Measures Act, 1914." The expropriation was made on account of the war when unrestricted

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submarine warfare was being carried on with alarming results to the commerce of the Empire, and to cope with the aftermath of the war in so far as it concerned shipping.

In expropriating this property, devoted to a certain extent to public use and to a like extent affected with a public interest, the Crown was endeavouring to meet the emergency affecting the Empire at large and to foster the building of vessels and the facilities for repairing the same. Wide powers were given the Executive under the War Measures Act, and in exercising them the Crown resorted to the machinery provided by the Expropriation Act, as enlarged by the Order in Council of the 17th March, 1917, (Ex. "B," and deposited plans and specifications as provided by section 8 of the said Act.

The Minister, as provided by the said section 8, having deemed it advisable to expropriate, has exercised his statutory discretion and the Court has no jurisdiction to sit on appeal or in review of such decision. That it cannot go back of that decision is a legal truism. These questions are political in their nature and not judicial—Lewis on Eminent Domain, sec. 239. The courts cannot enquire into the motives which actuate the authorities or into the propriety of their decision. *Dunham* v. *Hyde Park* (1); *Gilbert* v. *New Haven* (2). See *Beckman* v. *Saratoga and Shenectady Rd. Co.* (3); *Jackson* v. *Winn's Heirs* (4); *Brimner* v. *Boston* (5); *Matton* v. *The Queen* (6); *Vautelet* v. *The King* (7); *Wijejashear* v. *Festing* (8). *Atty. Gen.* v. *de Keyser's Royal Hotel, Limited* (9).

(1) 75 Ill. Rep.; 371.
(2) 39 Conn. 467.
(3) 3 Paige (N.Y.) 45.
(4) 4 Littell, 322.
(5) 102 Mass., 19.
(6) 5 Ex. C.R. 401.
(7) Auddette's Practice, 115.
(8) [1919] A.C. 646.
(9) 36 T.L. R. 604.

Moreover, is not the company estopped from setting up such a plea, having waived any objection to the expropriation, if any reasonable one might have been set up, by voluntarily advising the Crown through its President, in several letters, that it would turn over the property and assist in every way in handing over possession. Furthermore, accepting the expropriation, as a *fait accompli*, they asked and were granted delays in delivering possession until the 24th June, 1918, without at any time, reserving the right to attack the expropriation proceedings,—a decision arrived at afterwards. When the Government was wavering as to whether or not they would expropriate, on the 23rd January, 1918, the President of the company wrote that if the Government wished to purchase they would take the purchase money in Dominion securities. This is absolutely inconsistent with the allegation put forward on the trial that the property was taken against the will of the company. So far from taking the stand of an owner relieved of his property *in invitum*, Mr. Brookfield's attitude at this time was that of a willing vendor, in fact, of a man eager to sell, and, as fully set forth in the Order in Council of the 15th January, 1918, the original proposal to expropriate came from the company. Mr. Brookfield was helping the Government as much as possible by making it easier in finding the moneys to pay for it. However, on the 28th May, 1918, when the Government had made extensive repairs at its own expense the company refused an offer of $1,100,000.

Now, the property in question, a Graving Dock, with all its component parts, viz., land, land under water, buildings, wharves, machinery and tools, chattels, the dock itself, etc., must be assessed at its

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commercial market value to the owner, in respect of the best uses to which it can be put as a going concern, with its good-will.

A mass of evidence has been adduced on behalf of the proprietors with respect to the value of each of the component parts, therefore the Crown has followed the same course by offering statements in answer. Estimates by several of the defendant's witnesses giving opinion evidence, have been prepared in connection with the cost of reconstruction of the dock; but such estimates are all much subject to serious criticism, too long indeed to analyze here in detail on account of the view I take of the case,—and, I must say, I do not feel warranted in accepting these estimates which appear on their face to be unduly unreasonably large and which are manifestly largely speculative. At the time of the expropriation, fully seventy per cent of the inside facing of the Dock had to be repaired and replaced at a cost estimated, by the parties actually engaged in such repairs, of $151,000. These estimates of reproduction did not allow a proper amount for depreciation, assuming that such repairs will make the dock as good as new,—an erroneous view taken by them confusing efficiency with value. Depreciation is the lessened utility value caused by physical deterioration or lack of adaptation to function under requirements. The replacement of parts, as they need replacement, will not keep the property as valuable as when new, unless the parts are all replaced at once, which is practically impossible. There is not only the physical depreciation to be taken into account, but also the "supersession," that is the functional depreciation which may result from the growth of the business which renders the structure

inadequate, or to the development of the art which renders it obsolete. Supersession is the discarding of a thing before it is worn out.

As I remarked at trial, if the life of a street car be 20 years, and that it has run for 11 years, it will still answer the purpose for which it was built for another 9 years, and it is still efficient in rendering such service; but its value is not the same as new, although its efficiency for 9 more years is still good. The same principle applys to the dock, which is 29 years old. And this is said in view of the contention of some witnesses who said that the Dock was as good as new for all working purposes.

This Dock was built partly with subsidies amounting to $600,000, coming in severally from the Dominion Government, the City of Halifax, and the Imperial Admiralty, the latter being entitled to place any vessel in the Dock, and when such vessel is above 6,000 tons, they are not to be charged for any extra tonnage beyond the 6,000 tons.

The capital of the company was $750,000, and the greater part of the stock issued was handed over to the contractor building the dock, as part payment of his contract price. There was never any dividend paid upon the stock, a matter which must not be overlooked when arriving at the value of its good-will. The stock was obviously not very attracitve to the public.

The Crown in paying for the value of the Dock, and its component parts, at the date of the expropriation, will pay for all the reinstatement and work done since the explosion both by itself and the company, and moreover will also pay full value for the property towards which it has already paid a subsidy of $200,000.

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Be that as it may, this is not said by way of weakening the claim of the owners, because they are justly entitled to it; but, only to show that no extravagant price should be allowed and that only a fair and just compensation is all the owners are entitled to.

The Dock is not a large one, and the company has ever and anon mooted the question of enlarging it with a view, as said by the President, *to take any vessel in the Canadian trade*, and has approached the Government for help to that effect.

In assessing the compensation for the Dock due consideration must be given to the history of the company from its origin, how it was organized, what was its capital, how it was applied and financed, the business it was carrying on, its actual profits, the returns to the shareholders, the age of the Dock and its state of repairs, and while one must also examine the component parts of the Dock, the good-will of the industry as a going concern, the compensation must be arrived at upon its commercial market value as a whole at the date of the expropriation, without being obliged, in arriving at such value, to go into abstract calculations with respect to each component part, but taking all of them as a whole after having weighed and considered each of them. See upon this view, *The King* v. *Kendall* (1), — confirmed on appeal to the Supreme Court of Canada, 29th Oct., 1912; *The King* v. *The Carslake Hotel Co.*, (2), — confirmed on appeal toSupreme Court of Canada, 13th June, 1916; *King* v. *Manuel* (3), — confirmed on appeal to Supreme Court of Canada, 29th December, 1915.

Now, the valuation of the property as a whole is the method that would be resorted to and adopted by a

(1) 14 Ex. C.R. 71-81. (2) 16 Ex. C.R. 24,33.
(3) 15 Ex. C.R. 387, 389.

business man desiring to buy or sell. He would not make an offer for each component part of the property,—and indeed, this is the method that the defendant company itself has adopted when there was any question of sale. On the 14th December, 1917, The Halifax Graving Dock Company sent to the Right Honourable Sir Robert Borden the following telegram: "Hon. Mr. Carvell and Hon. Mr. Reid have approached me with a view of Government taking over our Dry Dock plant and all connected with it as it now stands, price to be fixed by the Exchequer Court with a maximum clause that court will not exceed one and a quarter million dollars. On behalf of company, I agree to this proposition if Government accept."

Then at p. 19, Exhibit 58, one of the books of correspondence, is a letter of the company to Mr. Carvell, Minister of Public Works, dated the 15th June, 1918, where the following excerpt is found, viz:—"After the explosion, when the buildings were knocked down and the whole place devastated, I offered you the dock, never doubting but that the management would remain in my hands. Two weeks afterwards you declined to purchase. You then agreed to reinstate buildings and plant and I told you this would probably cost $400,000, so this adds at least a value of $250,000 to the property making $1,500,000, to which should be added an amount for goodwill and a going business."

It is well to note that when the company place a price upon this property, they do so as a whole, and do not resort to the speculative statement prepared by the witnesses giving opinion evidence, and moreover, it is well to note also that their offer does not suggest any state of mind indicating an unwillingness to sell, but rather to inflate the price to $5,000,000. That

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Reasons for Judgment.

was an afterthought apparently. But the fixing of price, the fixing of compensation is a matter of judgment, and one cannot do more than indicate within perhaps fairly narrow limits the figure at which the value should be placed.

To allow the claim as estimated by the defendant's witnesses would be doing a most misconceived and egregious piece of justice to which I cannot adhere.

I have had the advantage, accompanied by counsel for both parties, of viewing the premises in question, and to see with my own eyes the unsightly state of the disintegrating cement of the facing of the interior of the dock patched with brick, involving repairs to an amount of about $151,000. However, the dock in its present state of repair, 29 years old, with all its apparent defects, has a real substantial value, and if its defects have been brought out by the plaintiff, it must not be forgotten that an extravagant and inflated price of $5,000,000 has been asked by the defendant in the pleadings.

I have therefore come to the conclusion after making all allowances, and weighing all proper legal elements of compensation, to allow, for the Dock property, as it stood at the date of the expropriation, with all the improvements made since the expropriation, both by the Crown and the defendants, covering all its component parts, and its good will as a going concern, the sum of..... $1,400,000.00

from which should be deducted the sum of..... 8,315.20

paid to the company, as shown by Exhibit "X." $ 1,391,684.80

To which should be added the sum of the amount the Crown collected for scrap as shown by Exhibit 56. 2,395.37

$ 1,394,080.17

To this amount should be added interest at the rate of five per cent per annum from the date of delivery and taking possession, namely on the 24th June, 1918, to the date hereof. I have endeavoured to avoid delaying the rendering of the judgment in view of the heavy interest accumulating upon such a large amount, which up to date would amount to a sum approximating $141,000.

Then, there will be judgment as follows:—

1st. The land and property, including all buildings, plant, machinery, tools, wharves, and chattels expropriated herein, are declared vested in the Crown from the date of the expropriation.

2nd. The compensation for the same is hereby fixed at the total sum of $1,400,000, which after making proper adjustment as above mentioned, is reduced to the sum of $1,394,080.17 with interest thereon at the rate of five per cent per annum from the 24th June, 1918, to the date hereof.

3rd. The defendant The Halifax Graving Dock Company, Limited, upon giving to the Crown a good and sufficient title in respect of the dry land, the buildings, the plant, the machinery, tools, wharves, and chattels, etc., free from all encumbrances, mortgages,—save the right of the City of Halifax in respect of its sewer,—and further upon giving a release of whatever title the said company has with respect to the land covered by water, irrespective of its area, are entitled to recover and be paid by the plaintiff the said sum of $1,394,080.17, with interest thereon as above mentioned, to the date hereof; the whole in full satisfaction for the land, property, and chattels taken as above mentioned, and for all damages resulting from the expropriation.

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4th. The defendant company is also entitled to recover and be paid by the plaintiff the costs of the action.

Solicitor for plaintiff: *W. L. Hall, K.C.*

Solicitor for defendants: *McInnis, Jenks, Lovett, and Kenny.*