1930

Aug. 21.
Oct. 15.

BETWEEN:

HIS MAJESTY THE KING.....PLAINTIFF;

AND

JOSEPH J. BERUBE AND WIFE.....DEFENDANTS.

Expropriation—Market value—Purchase price—Evidence of market value

Held, that, although under certain circumstances, the price paid for land cannot properly be taken as the market value thereof, nevertheless, where a careful purchaser, not obliged to buy, parts with his money, without pressure or inducement from the owner, willing but not obliged to sell, and after carefully considering the matter, and more especially the special advantages the land in question offered for the carrying on of the business he proposed to start, then the price so paid is cogent evidence of market value.

INFORMATION exhibited by the Attorney-General of Canada to have certain lands expropriated by the Crown valued by the Court.

The action was tried before the Honourable Mr. Justice Audette at Edmundston.

J. T. Hebert for plaintiff.

A. J. Dionne and *A. M. Chamberland* for defendants.

The facts are stated in the reasons for judgment.

AUDETTE J., now (October 15, 1930), delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, among other things, that certain lands, therein described and belonging to the defendants, were expropriated by the plaintiff, for the purpose of a public works of Canada, i.e., a right of way for a spur line of the Canadian National Railways, at Edmundston, in the county of Madawaska, N.B., by depositing, on the 9th November, 1920, a plan and description of such lands in the office of the Registrar of Deeds for the said county where the lands are situated.

The lands taken consist of lot 9, 100 x 100 feet, and lot 11, 50 x 50 feet, for which the plaintiff, by the information, offers $730.65 including all damages resulting from the expropriation. The defendants, by their statement in defence, aver that the amount offered is inadequate and claim $5,000 with interest and costs.

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The defendants, on the 12th August, 1920, bought lot No. 9 (Exhibit B) for the sum of $1,500; and on the 19th August, 1920, bought lot No. 11 (Exhibit A) for $750—for which they then and there paid cash, without having any idea or knowledge of the expropriation, as established by the evidence.

These deeds of purchase, exhibits A and B, forthwith give to the defendants

the privilege of right of way to and from the said described lands to Victoria street with free ingress, egress and regress to and for the said Joseph J. Bérubé and Euphémie Bérubé, their heirs and assigns and their tenants and undertenants with carts, vehicles, carriages, horse or cattle as to him or them shall be necessary and convenient in common with them the said Levite J. Cyr and Eva L. Cyr (the vendors) their heirs and assigns, tenants or undertenants, till the Town of Edmundston acquires the necessary lands for streets leading to the said land hereby transferred from the said Levite J. Cyr and Eva L. Cyr, their heirs and assigns.

This road or right of way is to serve both the defendants, their tenants and undertenants, as well as the vendors, their tenants and undertenants and the cost of this road and its maintenance would obviously have been shared between them, until the municipality had taken hold of it.

This question of road or right of way has been much debated at trial; but it has been established beyond peradventure by witnesses who knew the *locus in quo* in 1920 —the year of the purchase and the expropriation—that there was at the time a road from these lots to Victoria street. As said by witness Ouellet, it was a farmer's road and it was the *exit* used by the people residing on the north of the Canadian Pacific Railway. People were using it all the time. This road is now partly covered by the extensive filling made by the railway; a filling which at some place is seven to eight feet in depth. Yet there are still some indicia of it at places.

Now it will be seen that the amount offered by the plaintiff is much less than the amount actually paid by the defendants for these lots in 1920. The defendants' evidence as to value is that the price paid at the time is fair and just. Some of the defendants' witnesses testified they tried, without success, to purchase similar lots from the same vendors at the same prices and even higher. And the price paid is in no sense more than the price that legitimate competition of purchasers would reasonably force it

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up to. *Sidney* v. *North Eastern Ry. Co.* (1). And after all what is it the owner of these lots has lost? It is at least what he has paid for them. The basis of the compensation to be arrived at is the value of the land to the owner at the date of the expropriation. And the market price or value of the lands may be tested by the imaginary market which would have ruled had the land been exposed for sale. The defendants' evidence, however, is not shared by the three witnesses heard on behalf of the Crown. However two of these witnesses only saw the land a couple of years ago, when it was all covered by an extensive filling and one of them is the employee of the C.N.R. The third witness might have been influenced by the fact that he had been in litigation with the vendors. The weight of the evidence, as established by the numerous witnesses on behalf of the defendants, is preponderantly in favour of the defendants not to say any more with respect to the class of evidence heard on behalf of the plaintiff. The defendants' evidence is earmarked by a knowledge of the *locus in quo* before the expropriation, its environs and the business activities in the city.

The defendant Bérubé has some experience in business, has the necessary capital to carry on the business for which he purchased these lots.

It is true it may be that in certain circumstances the purchase price may not be the market value; but in a case like the present one, much weight must be given to the action of the defendant Bérubé when he parts with his money, after carefully considering the matter, and more especially to the special advantages these two lots afforded from their nature for the business he intended to carry thereon.

The eastern lot—No. 9—which was more on a level, he intended to use for firewood. Lot No. 11—the one closer to Victoria street—which was on a slope, he intended to use the lower part thereof for coal, using the balance for cement, lime, lumber, etc. The two lots are adjoining the railway and the unloading from the same would have been done with great advantage and financial benefit, saving heavy cost of hauling and second handling. The coal

(1) (1914) 3 K.B. 629 at p. 641.

could be unloaded from the cars through chutes down to the lower part of lot 9. It is said to be the most favourable site, for the purpose, in Edmundston.

Is not the fair market value of property the amount of money which a purchaser, like in the present case, willing but not obliged to buy, will pay to an owner willing but not obliged to sell, taking into consideration all uses to which the land can be adapted and might in reason be applied? *Nichols,* on Eminent Domain, 658.

Indeed for the special business purposes for which the defendants have purchased these lands, i.e., for coal, cement, contractors' supplies, fuel wood and lumber, the advantages resulting from the topography of these lots adjoining the railway, making them what is called trackage lands, would justify a prudent man in the position of the defendant to give this price rather than fail to acquire the land. Defendant Bérubé, heard as a witness, declared he would be willing to give a higher amount for similar lands, but the evidence does not disclose if any available. The land was not offered to him by the vendor, he went to him and asked him to sell.

The special suitability of the land for the business the defendant intended to carry on and the savings and additional profits which he would derive thereby, are essential elements in assessing compensation. *Pastoral Finance Association, Limited* v. *The Minister* (1). And the price of a piece or parcel of land may often be gauged by the need of the purchaser's business. *Nichols,* on Eminent Domain, 673.

The area taken is small. The lots are physically distinct and are independent parcels, standing by themselves. The ratio per acre payable as indemnity to the owner of a large tract of land, cannot be used as a criterion or as a test to arrive at the value of a small lot, much more so when the very site of the small lot is especially valuable from its special adaptability in carrying on a certain class of business, as the one mentioned in this case.

I have come to the conclusion that there is abundant evidence to support the view that the lands in question were at the time of the expropriation well worth at least the

(1) (1914) A.C. 1083.

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price paid for them by the defendants, namely $750 for lot 11 and $1,500 for lot 9.

Therefore there will be judgment as follows:

1. The lands expropriated are hereby declared vested in the Crown as of the 9th November, 1920.
2. The compensation for the lands so taken and for all damages whatsoever resulting from the expropriation is hereby fixed at the sum of $2,250 with interest thereon at the rate of five per centum per annum from the 9th November, 1920, to the date hereof.
3. The defendants, upon giving to the Crown a good and satisfactory title, free from all mortgages, hypothecs, charges or encumbrances whatsoever, are entitled to recover from the plaintiff the said sum of $2,250 with interest as above mentioned.
4. The defendants are entitled to the costs of the action.

Judgment accordingly.