

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

1914
June 15.

PLAINTIFF,

AND

GEORGE DUNCAN AND ELIZABETH DUNCAN,
DEFENDANTS.

Expropriation—Water lots—Compensation—Riparian rights—Access.

A riparian owner on the foreshore of a tidal and navigable water has the right to the water for domestic purposes, also the right of access and exit to and from his property, which are elements of value in estimating compensation for the expropriation of lots by the Crown.

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

Tried before the Honourable Mr. Justice Audette, at Campbellton, N. B., June 10, 11, 1914.

J. B. M. Baxter, K.C., and *G. Gilbert*, K.C., for plaintiff.

H. A. Powell, K.C., and *W. A. Trueman*, for defendants.

AUDETTE, J. (June 15, 1914) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that, under the provisions of the *Expropriation Act*, certain pieces of land, belonging to the said defendants, were expropriated for the purposes of providing additional yard room, buildings and tracks for the Intercolonial Railway, at Campbellton, in the Province of New Brunswick.

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Three plans and descriptions were respectively filed of record, in the Office of the Registrar of Deeds for the County of Restigouche, New Brunswick, namely: The plan and description respecting Parcel 1, in the said information mentioned, and dealing with the piece of land under lease, were so deposited of record on September 8th, 1910. The plan and description respecting parcels Numbers 2 and 3, in the said information mentioned, and dealing with the piece of land abutting on the river, together with the lane of 14 feet, were so deposited on August 31st, 1910. Finally, the plan and description, respecting parcel 4, in the said information mentioned, and dealing with half of Sugar-Loaf Street, were so deposited on May 19th, 1911.

The Crown tendered by the information the sum of \$6,100.

The defendants aver by their plea that the amount tendered is wholly insufficient and inadequate, and claim the sum of \$30,000.

Here follows a brief statement of the evidence adduced at the trial.

On behalf of the defendants the following witnesses were heard, viz.: William F. Yorston, Geoffrey Stead, Arthur W. Wilbur, Stenning H. Lingley and Alexander McLennan.

William F. Yorston, married, 14 years ago, the defendants' daughter, and ever since his marriage has resided with the defendants and has had the management of their business. The defendant Geo. Duncan is 76 years of age—has been confined to his home by illness for nearly a year. The fire which swept part of Campbellton took place on July 11th, 1910. In 1886 this piece of land of 410 feet, abutting on the river, had been divided in 8 building lots. Be-

fore the fire Alexander McLennan offered \$1,000 for the eastern lot of 50 feet wide down to the road at the bluff on the river side, he being the proprietor of the adjoining eastern lot, and George Duncan refused the offer. During the summer before the fire, Mr. Malcolm asked what price the defendant Duncan would take for all the land, on the river side, from Sugar-Loaf Street to the point marked "Z" on plan filed herein as Exhibit No. 4; and Yorston, after consulting Duncan, told Malcolm he would give him an option for the same for the sum of \$25,000. When Yorston told this to Malcolm, the latter said it was all right,—but nothing came out of it,—it did not mature, and Malcolm never made any offer.

Geoffrey Stead is a civil engineer and speaks with respect to the project of a wharf, and the cost thereof.

Arthur W. Wilbur is the civil engineer who made the survey of the Restigouche River, taking depths opposite the property in question with respect to the scheme of a wharf. There being shallow water opposite this property, it would be expensive to dredge for a wharf at that place.

Stenning H. Lingley, Town Treasurer of Campbellton, speaks respecting the population of the different wards and the taxation of property.

Alexander McLennan, manufacturer, has his foundry on a piece of property leased from Duncan, immediately to the east of Parcels Nos. 2 and 3 hereof. He offered to Yorston, who was Duncan's agent, the sum of \$1,000 for 50 feet to the top of the bank, adjoining his property, and he told Yorston he was even willing to buy or lease the whole of the 410 feet to Sugar Street on that basis, including the

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access to the shore. He looks upon the shore privileges as valuable, and he has already landed goods and machinery at the foot of Sugar Street. There is a road outside of the fence, at the bluff, near the shore. He thinks the land in question is worth to him the price he offered, but does not know what it is worth to anybody else.

On behalf of the Crown the following witnesses were heard, to wit: Henry C. Reid, John Harquail, Fred. M. Anderson, William F. Napier and Charles C. Duberger.

Henry C. Reid, manufacturer, values parcel No. 2 at \$400 a lot, dividing it into 8 fifty-foot lots, equal to 400 feet,—allowing for a road which would give a depth of 70 to 80 feet to the lots. Making for the eight lots the sum of\$ 3,200.00
 To which he would add for damages and
 compulsory taking, the further sum of.. 800.00

 making the total sum of \$4,000.00

In making his valuation of the leasehold lots at \$2,100 he included the value of the lane, giving access thereto, and allowed a certain amount for the compulsory taking.

He did not allow anything for the eastern half of Sugar Street,—which is equal to 30 feet in width,—because he says it gave value to the eight lots in giving access thereto. He further adds he considered the water privileges.

He valued the 471 by 150 feet belonging to Jane C. Duncan, and situated to the west of the present property, and also abutting on Sugar Street, at \$600 a lot.

John Harquail, in valuing at \$2,100 the leasehold lots, included therein the 14-foot lane and allowed a certain amount for compulsory taking.

He allowed \$3,200 for the 8 lots at the rate of \$400 a lot, inclusive of the value of Sugar Street, and taking the shore privileges into consideration.

Fred. M. Anderson, in valuing at \$2,100 the leasehold property, included therein the 14-foot lane and allowed a certain amount for compulsory taking.

He also allowed \$400 a lot for the 8 lots, making the sum of \$3,200, and allowed the further sum of \$800 for damages and compulsory taking, inclusive of the Sugar Street land.

The Jane C. Duncan property was valued at \$800 a lot. However, that figure was afterwards in the course of the evidence corrected and ascertained at \$600 a lot.

William F. Napier speaks as to the advisability and necessity of wharves at Campbellton. He says that there are presently enough wharves, but is not prepared to speak as to the future.

Charles C. Duberger, a surveyor, has taken levels. From the top of the railway embankment to the high water level there is a difference of 32.15 feet. The railway embankment is 9 feet high.

This concludes the evidence.

It is admitted by both parties that the sum of \$2,100 for the leasehold lots, inclusive of a certain amount allowed for compulsory taking, is fair and just compensation for the same.

The Crown filed at trial an undertaking whereby it gave the defendants a road or right-of-way, 14 feet wide, beginning at the eastern boundary line of George Duncan's lands, now under lease to one Alexander McLennan, thence easterly following

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the northern boundary line of the Intercolonial Railway lands to the eastern boundary of George Duncan's land, and a continuation of said road easterly to the present junction with the road leading from Water Street to Duncan's Point; also a road or right-of-way over the Intercolonial Railway lands from the western end of Water Street to the lands of the said George Duncan, as indicated on the plan, filed as exhibit No. 4 herein, and marked thereon by letters A, B, C, D, and E, said road to be constructed and maintained by the Crown.

This is, indeed, a very valuable undertaking and of very great advantage to the defendants who, without it, were left without access to or exit from the balance of their property lying to the east of the lands expropriated herein.

While the foreshores on the Restigouche River, which is a tidal and navigable river, are at the place in question up to high water mark in the right of the Provincial Government, subject to the paramount right of regulating navigation in the Federal Parliament, there exist certain rights in the riparian owners, which are, under the *Lyons* case, distinguishable and in excess of those held by the public at large. The riparian owner has the right to the water for domestic purposes, which, however, in salt water do not amount to much. He has also the right of access and exit to and from his property, etc. These rights are of some value, of, indeed, appreciable value.

The Crown's valuers, it may be said, proceeded upon a wrong principle of law and fact in not allowing anything for the 30 feet in width on Sugar Street,—on the assumption that this road could only be used in connection with the 8 lots in question.

That road was of itself of value to the owner, who had his dwelling house to the southwest of the railway track. That road was available and of value to him to get to the river and draw upon this road anything landed on the shore at the foot of Sugar Street. A certain amount should be allowed for that road, and the defendants are fully entitled to it.

Then if the lots of Jane C. Duncan, which are, it is true, deeper than the lots on the George Duncan property, have been assessed and paid for at the rate of \$600, why would George Duncan's lots be assessed only at \$400. Jane Duncan's lots abut at one end on Sugar Street—just as George Duncan's lots do. The former lots had all the disadvantage of being near a railway track, because the railway was passing there before this expropriation. It is true some advantage might be derived from such neighbourhood, but approaching them as building lots such neighbourhood would be detrimental.

Pursuing the comparison of the lots of Jane C. Duncan with those of George Duncan, the latter have certainly a great, material and valuable advantage over the former, in that they have the water front, with all the commercial advantages derivable therefrom.

In view of all the circumstances above related, it is thought that if the basis of valuation of \$600 for each of the 8 lots were allowed, a fair and just compensation would be arrived at. In this sum of \$600 a lot will be included a certain amount for the land forming part of Sugar Street, which the Crown's valuers have neglected to take into account and the 10 feet over and above the 8 fifty-foot lots.

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Consideration is also given to the great advantage resulting from the Crown's undertaking given at trial.

Taking the 8 fifty-foot lots at \$600	\$ 4,800
and the sum of	800
allowed by the Crown's witnesses for damages, etc.,	
and the further sum of	2,100
for the leasehold lots, we arrive at the total sum of	\$7,700

for which judgment will be entered.

Therefore, there will be judgment as follows, to wit:

1st. The lands expropriated herein are declared vested in the Crown from the date of the expropriation.

2nd. The compensation for the lands so taken and for all damages resulting from the said expropriation is fixed at the sum of \$7,700, with interest.

3rd. The defendants, upon giving to the Crown a good and sufficient title free from all incumbrances upon the said property, are entitled to be paid the sum of \$7,700, with interest upon the sum of \$2,100 from September 8th, 1910, to the date hereof, and upon the sum of \$5,600 from August 31st, 1910.

4th. The defendants are entitled to the costs of the action after taxation thereof.

Judgment accordingly.

Solicitor for plaintiff: *George Gilbert.*

Solicitors for defendants: *Powell & Harrison.*