

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

1916
March 20.

PLAINTIFF,

AND

PATRICK KING,

DEFENDANT.

*Expropriation—Compensation—Farm—Timber land—Valuation—
Damages—Offset—Use and occupation.*

The basis of compensation for the expropriation of farm or timber lands by the Crown for training camp purposes is the market value of the property as a whole, at the date of expropriation, as shown by the prices other farms had brought in the neighbourhood when acquired for similar purposes; the benefits derived by the owner from the use and occupation of the land after the expropriation to go as an offset against his claim for damages.

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

Tried before the Honourable Mr. Justice Audette,
at Quebec, March 6, 7, 1916.

G. G. Stuart, K.C., for plaintiff.

L. S. St. Laurent, K.C., for defendant.

AUDETTE, J. (March 20, 1916) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that certain lands and real property, described in the amended information and belonging to the defendant, were taken and expropriated by the Crown under the provisions of the *Expropriation Act*, for the purposes of "The Valcartier Training Camp," a public work of Canada, by depositing on Septem-

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ber 15th, 1913, a plan and description of the same, in the office of the Registrar of Deeds for the County or the Registration Division where the same are situated.

While the property was expropriated in September, 1913, the defendant was allowed to remain in possession after that date for a long period of time, as will be hereafter mentioned.

The defendant's title is admitted.

It is also admitted and agreed upon by both parties, that Lot No. 20, the farm lot, contains 89½ arpents, out of which 20,000 square feet must be deducted, as having been sold to third parties before the expropriation; and that Lot No. 22, the bush lot, contains 146 2-5 arpents.

The Crown, by the information, offers the sum of \$2,600 for Lot No. 20, and the sum of \$1,300 for Lot No. 22. The defendant claims \$5,000 for Lot No. 22 and \$5,000 for Lot No. 20,—although expressing his willingness to accept \$4,900 for the same, as intimated on previous occasions,—together with the sum of \$140 for alleged damages suffered in disposing of his stock,—making in all the sum of \$10,140.

While the expropriation took place on September 15th, 1913, the defendant was allowed to remain in possession of his property for quite a while after that date. He and his family had the use of the residence and buildings on Lot No. 20 up to May, 1915, and resided there until that time. The Crown took possession of Lot 20 some time about August 9th, 1914. The defendant had his crop of 1913, and the use of his farm up to August 9th, 1914. On the 15th September, 1914, he was paid the sum of \$425 “in full settlement for all claims and damages of

“any and every nature whatsoever on Lot 20,” as appears by the receipt for this sum of \$425, filed as Exhibit No. 3.

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On behalf of the defence, witness *Giroux*, assuming Lot No. 20 contained 94 arpents, valued it at \$25

an arpent	\$2,350.00
The dwelling house	967.60
Extension kitchen	67.20
The barn	1,077.12
3 lean-tos	75.00
Dairy ..	25.00
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	\$4,561.92
And he added thereto.....	338.08
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to make up the amount of.....\$4,900.00

for which he had obtained an option from the defendant. And he adds, “that was the value in August, 1914.” He says to arrive at the intrinsic value of a property it has to be valued in details. He further testifies that the value of the farm (Lot No. 20), without any question of expropriation, is the sum of \$3,000 to \$3,500.

Witness *Vallee* values only Lot 22, which is a bush lot, with about 8 arpents under cultivation, at \$5,325. To arrive at this figure, he proceeds by first estimating the quantity of commercial timber, pulp and cordwood upon the lot. He reckons there are 90 arpents with 882 cords of standing pulpwood, upon which he could realize \$2.50 a cord. Twenty pieces of commercial timber at \$2 a piece. One hundred and twenty standing cords of fuel at 75 cents profit upon each. Then he says, there are 38 arpents of swamp upon the lot, and an old barn which he valued

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at \$50, and 8 arpents of good land under cultivation, which he valued at \$100 an arpent. He values the swamp at \$5 an arpent, and the balance which is not cleared at \$20 an arpent, adding that by working out the lot he would make \$3,000 and retain the land. On cross-examination he stated he does not know of any farm at Valcartier which was ever sold at \$100 an arpent. He bought the right to cut on 8 or 10 lots, some of 80 others of 100 arpents, for \$500 each. In 1903 he bought a wood lot for \$400.

Witness *Jules Croteau*, a civil engineer, who did not show much qualification to value a bush lot, proceeded upon the same basis as the previous witness to arrive at the value of that Lot 22 at \$5,332, as the intrinsic value. He states that he valued the lot upon the consideration that by working it he could realize the profits he mentioned. He further says a purchaser could advantageously purchase at \$3,500 to \$4,000. He estimates also the number of flooded acres upon this lot.

Witness *Murphy* examined Lot. No. 22 in March, 1916, and estimates there are 1,000 cords of pulpwood standing on it, and 120 cords of cordwood,—and values the pulpwood at \$2.75 a cord, and the cordwood at \$1 standing; but this witness did not put any valuation upon Lot No. 22 as a whole. He valued Lot 20, under the quantity survey method, as follows:

4 acres of swamp at \$5.....	\$ 20.00
12 acres of bush land at \$15.....	180.00
And upon which are 3 cords of pulpwood per acre, at \$2.....	72.00
1 cord of wood per acre.....	12.00
53 acres of land at \$30.....	1,590.00
4 acres of land at \$75.....	300.00

8 acres of land at \$75.....	600.00
2 acres of land at \$75.....	150.00
6 acres of land at \$100.....	600.00
Building	1,190.00
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Making the total of.....	\$4,714.00

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The buildings he valued as follows :

Dwelling-house	\$500.00
Dairy ..	10.00
Pig pens	20.00
Machine and other sheds...	60.00
Barn and stable	600.00
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	\$1,190.00

The valuation of \$4,714 was made in November, 1915, in company with witness, Maher.

Witness *Maher* valued Lot 20 at \$4,714 and agrees with the details given by the previous witness. He values the bush lot, Lot No. 22, at \$5,765, and states there are almost 8 acres of cleared land upon it, and about 38 acres of swamp. He estimates there are about 882 cords of wood upon the lot, 20 large commercial trees, etc., and says he does not know—or does not remember—of any sale of wood lots, at Valcartier, previous to 1913, or of any farm selling at \$75 or \$100 an arpent, but that he bases his valuation on what he thinks he could get out of this lot, which he visited once in September, 1915. He further adds that this lot *en bloc* is worth to a farmer from \$3,500 to \$4,000.

Patrick King, the defendant, says he has under cultivation about 75 arpents on Lot No. 20, and 8 or 10 on Lot No. 22. He sowed oats in 1914, but was

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settled with by the Crown for all damages in respect thereto. On Lot No. 22, upon which he reckons there are between 38 to 40 arpents of swamp, he estimates there are 1,000 cords of pulpwood. Carrying on the practice his father had before him, he was cutting some wood every year on Lot No. 22. In 1914-1915 he cut six cords of pulpwood, the cordwood for the use of his home, 75 saw logs and about 7 pine logs. He has been working at the Power House since April 1st, 1914. He further claims the damages mentioned in the defence.

On behalf of the Crown, Colonel McBain values Lot No. 22 in 1913 at not over \$1,200 and says there are about 60 arpents of swamp on that lot; and if the wooded part was cleared there would remain but sandy land. He further values Lot No. 20, as of September, 1913, at the sum of \$2,600 which, he said, is the outside figure, and adds, if that farm had been advertised in 1913, for one month, it could not sell for anything over that amount. This witness purchased 31 farms, at Valcartier, as appears by Exhibit No. 4, at an average price of \$16.57 to \$17 per arpent.

Witness *John Jack* values Lot No. 22, as of September, 1913, at the sum of \$1,700, which, he says, is an extraordinarily big price. He examined and went over the bush lot for one day and a half, and estimates there are between 60 to 70 arpents of swamp, and from 8 to 10 arpents of good land on it. On Exhibit "C" he indicated what he thought was swamp, as distinguished from the balance of the lot. He says a man can walk with difficulty over the swamp, but that he would lose a horse if he took it there. He had a stick, at the time of his inspection of the lot, which he ran down for a couple of feet.

Leslie H. Coombes, accompanied the previous witness when visiting Lot No. 22, and says they went over it 3 times, and he made a sketch of the swamp, which is now produced as Exhibit No. 5, estimating there are 62 arpents of swamp on this lot.

Captain Arthur McBain says Lot No. 20, with buildings, in September, 1913, could not be sold for \$2,000. He further says he purchased cordwood delivered at the Camp for \$2.65 and \$2.75 a cord.

Now, the defendant's farm of about 89 arpents, in round figures, after making the above mentioned deduction, would appear to be one of the fairly good farms at Valcartier, such as they are, that is, of sandy soil. The dwelling-house is old, but the barn and stable were built only about 6 years ago, and are in very good condition. About 75 acres are under cultivation, with about 12 acres of bush land and 4 acres of swamp.

Most of the evidence offered on behalf of the defendant in respect of Lot No. 20 has been on a wrong basis. Indeed, the witnesses proceeded by segregating the acreage of the farm and placing a certain value upon different sections,—running the price of some acreage as high as \$75 and \$100 an acre,—a price unknown to the witnesses as having ever been paid at Valcartier. Then, after valuing the land at \$25 an arpent, witness Giroux testified to the intrinsic value of each building, as of August, 1914, nearly a year after the expropriation, when, he says, prices were all spoiled. *Tout etait alors gâte*. These valuations are more with respect to the intrinsic value than of the market value of the property. Although it is true, however, that after arriving at these very high figures, some of the defendant's witnesses added that, to the farmer it was

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worth a lesser sum arrived at on a market value basis, and witness Giroux, without any question of expropriation, said the farm would be worth \$3,000 to \$3,500; but that was in 1914 when the Camp had inflated the values. Others spoke in that stress, but the valuation is either made as of 1914 or 1915.

With respect to Lot No. 22, the bush lot, the evidence of the defence is again arrived at on a wrong basis,—upon a wrong principle. As was said in the *Woodlock*¹ and the *McLaughlin*² cases, it is useless to juggle with figures and to estimate the quantity of sticks of wood upon the lot, estimate the number of cords of pulpwood, cordwood, the value of 19 or 20 sticks of commercial timber, and having done so, estimate the profits which can be realized out of that lot with the object of arriving at the market value according to such profits and to the additional value of the soil. In other words, it would mean that a lumber merchant buying timber limits under these conditions would have to pay his vendor an amount representing the value of the land together with all the foreseen profits he could realize out of the timber upon the limit. In the result leaving to the purchaser all the labour and giving the vendor all the prospective profits to be taken out of the limits. Stating the proposition is solving it, because no sane business man would purchase, or could afford to purchase, under such circumstances.

What is sought in the present case is the market value of this farm as a whole, as it stood at the date of the expropriation,—the compensation to be ascertained, not upon the bare market value, but on a liberal basis. We have as a determining element

¹ 15 Can. Ex. 429, 32 D.L.R. 664.

² 15 Can. Ex. 417, 26 D.L.R. 373.

to be guided by, a large number of sales of farms in the neighbourhood acquired under private agreements and sales for camp purposes at prices which by comparison go to make the defendant's claim excessive. The prices paid by Colonel McBain (as shown by Ex. No. 4), as of the date of the expropriation, are \$16.57 to \$17 per acre, and they afford the best test and the safest starting point for the present enquiry into the market value of the present farm. *Dodge v. The King*,¹ *Fitzpatrick v. Town of New Liskeard*.²

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For the farm and the buildings thereon erected I will allow \$30 an arpent, which is indeed a high price for farms in that locality, making for the 89 acres in round figures (20,000 square feet having to be deducted from the acreage, as above set forth),
 the sum of\$2,670.00
 To which should be added the sum of..... 600.00
 in round figures, in view of the barn and stable only recently built, and the fact that lots had been sold on the waterfront and others could be sold, and further to cover the cost of moving and all expenses incidental there to—

Making the total sum of.....\$3,270.00
 an amount coming within the range of the valuation of witness Giroux, heard on behalf of the defendant.

The valuation of the wood lot should also be arrived at as a whole and with the consideration of the sales above mentioned. *The King v. Kendall*,³ con-

¹ 38 Can. S.C.R. 149.
² 13 O.W.R. 806.
³ 14 Can. Ex. 71, 8 D.L.R. 900.

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firmed on appeal to Supreme Court. *The King v. New Brunswick Ry. Co.*¹ A deal of evidence has been adduced in respect of the value of this bush lot, and while it would seem that a bush lot of 146 arpents, with between 38 to 70 arpents of swamp and 8 to 10 acres of good land at Valcartier in September, 1913, must be of a good value to the owner, it cannot be worth anything like the amount claimed. I will allow for the same the sum of \$1,700,—which is characterized by the Crown's witness himself, who made that valuation, as a very extraordinarily high price.

The claim for damages, as mentioned in the plea, small as it is, seems to be the result of an after-thought, as would appear by the reference to Exhibit No. 3,—which is the receipt given in September, 1914, for the sum of \$425 in full settlement for all claims and damages of any and every nature whatsoever. The defendant remained in occupation of the farm up to August 9th, 1914, and resided on the farm, with the use of all the buildings, up to May, 1915. He further cut pulpwood, cordwood and commercial timber upon this property after the date of the expropriation. If all he has thus received from the benevolence of the Crown is not a waiver to such a claim for damages, and if he is not asked to account therefor, it can obviously be set up to offset any such claim for damages.

The compensation will be assessed as follows, viz. :—

For Lot 20, the farm.....	\$3,270.00
For Lot 22, the wood lot.....	1,700.00
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	\$4,970.00

¹ 14 Can. Ex. 491.

To which should be added 10 per cent. for compulsory taking...	497.00
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	\$5,467.00

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

1st. The lands expropriated herein are declared vested in the Crown as of September 15th, 1913.

2nd. The compensation for the land and real property so expropriated, with all damages arising out of or resulting from the expropriation, are hereby fixed at the sum of \$5,467, with interest thereon at the rate of five per centum per annum from August, 9th, 1914 (when the Crown took possession of the farm) to the date hereof.

3rd. The defendant is entitled to recover and be paid from the plaintiff the said sum of \$5,467, with interest as above mentioned, upon giving to the Crown a good and sufficient title free from all incumbrances whatsoever, the whole in full satisfaction for the land taken and all damages resulting from the said expropriation.

4th. The defendant is also entitled to the costs of the action.

*Judgment accordingly.**

Solicitor for plaintiff: *Ernest Taschereau.*

Solicitors for defendant: *Galipeault, St. Laurent & Co.*

* Affirmed on appeal to Supreme Court of Canada, December 11, 1916.