BETWEEN:

HER MAJESTY THE QUEEN .....PLAINTIFF;

AND

THE HULL SCHOOL COMMISSIONERS, RESPONDENT.

1954

May 25, 26
28, 31
June 1

June 3

Expropriation—Expropriation Act, R.S.C. 1927, c. 64, s. 9—Principle of re-instatement applicable to public school

The plaintiff expropriated property in the City of Hull on which there was a Roman Catholic public school. The action was taken to have the amount of compensation payable to the owner determined by the Court.

Held: That the expropriated property was of an exceptional character warranting the application of the principle of reinstatement.

2. That the defendant should receive such a sum of money as will enable it to replace the expropriated property by property which will be of equal value to it, that is to say, that the sum to be paid should be sufficient to cover the realizable money value of the land, the replacement value of the school building, being its reconstruction cost less its depreciation, these values being computed as of the date of expropriation, the value of the fixtures, the cost of moving to a new school and a sum equal to the increased cost of constructing a new school after the date of the expropriation.

3. That the estimation of the amount of compensation involves sufficient difficulty and uncertainty to bring the case within the ambit of the rule in *The King* v. *Lavoie* for an additional allowance for compulsory taking.

INFORMATION by the Crown to have the amount of compensation payable to the owner of expropriated property determined by the Court.

The action was tried before the President of the Court at Ottawa.

F. B. Major, Q.C. and *R. Farley* for plaintiff.

Hon. A. Taché, Q.C. and *J. Ste-Marie, Q.C.* for defendant.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT now (June 3, 1954) delivered the following judgment.

The information exhibited herein shows that the lands of the defendant, described in paragraph 3 thereof, together with other lands, were taken by His late Majesty The King for the purpose of a public work under the Expropriation

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Act, R.S.C. 1927, chapter 64, and that the expropriation was completed by filing a plan and description of the lands of record in the office of the Registrar of Deeds for the Registration Division of Hull, in which the lands are situate, on March 19, 1947, pursuant to section 9 of the Act. Thereupon the lands were vested in His late Majesty and the defendant ceased to have any right, title or interest therein or thereto.

The parties have not been able to agree on the amount of compensation money to which the defendant is entitled and these proceedings were brought for an adjudication thereof. The plaintiff by its information offered the sum of $68,247.90 but the defendant by its statement of defence claimed $180,000. At the trial this claim was raised to $250,000, pursuant to leave given.

The expropriated property is on the west side of Maisonneuve Street in Hull, 99 feet north of Boulevard Sacré-Coeur and carries municipal number 311. It has a frontage of 132 feet on Maisonneuve Street and a depth of 194′ 7″. On the property there is a three-storey brick and stone school building known as the Reboul School, of eight class rooms with a manual training room in the basement, maintained by the defendant as a public Catholic school.

The defendant purchased the front half of the land from the Marston Estate on May 22, 1903, for $650. This covered an area of 132′ by 99′ or 13,068 square feet. The back half extending to a projected street was acquired from the City of Hull on August 5, 1942, for the nominal consideration of $1. The area of this portion, including a 10′3″ lane, was 95′ 7″ by 134′ 6″ or 12,858 square feet. The total area of the land comes to approximately 25,926 square feet.

The school building was constructed in three stages. The original portion, approximately half of the total, facing on Maisonneuve Street and consisting of four class rooms and the janitor's quarters, was built in June, 1903, at a cost of $7,400. In May, 1915, there was an addition of two class rooms costing $7,875 and in June, 1923, there was a further addition of two rooms at a cost of $14,023. The average age of the sections as at the date of the expropriation, due regard being had to the fact that half the school was approximately 44 years old, was thus about 36 years.

In my judgment, the expropriated property is of an exceptional character warranting the application of the principle of re-instatement. While Mr. E. Pitt, who gave evidence of the value of the property, stated that he had sold school buildings, similar to the Reboul School, in Montreal for commercial purposes he did not think that he could have sold the Reboul School either for school or for commercial purposes. Under the circumstances, I am of the view that it would be proper to deal with the Reboul School property in the same way as I dealt with the Sacred Heart Hospital property in *The Queen* v. *Sisters of Charity of Providence* (1) and apply the principle of re-instatement as I did in that case. This means that the defendant should receive such a sum of money as will enable it to replace the expropriated property by property which will be of equal value to it, that is to say, that the sum to be paid should be sufficient to cover the realizable money value of the land, the replacement value of the school building, being its reconstruction cost less its depreciation, these values being computed as of the date of expropriation, the value of the fixtures, the cost of moving to a new school and a sum equal to the increased cost of constructing a new school after the date of the expropriation.

[The President then proceeded to consideration of the various items involved in the application of the principle of re-instatement and, after reviewing the evidence, continued.]

The total of the amounts which I have allowed, $9,100 for the land, $70,000 for the building, $4,500 for the desks, $300 for moving and $33,400 for the additional cost of construction comes to $117,300, which I put in round figures at $120,000. On the application of the principle of reinstatement I estimate the value of the expropriated property to the defendant at this amount. In my judgment, this is amply sufficient to cover all the factors of value to the owner that ought to be taken into account and, but for the recent decisions of the Supreme Court of Canada dealing with an additional allowance for compulsory taking, it would be the amount of compensation money, to which I would find the defendant entitled.

(1) [1952] Ex. C.R. 113 at 116.

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It was strongly urged upon me that this was a case in which an additional allowance of 10 per cent for compulsory taking should be made. I dealt with this vexatious question at length in *The Queen* v. *Sisters of Charity of Providence* (1). There I referred to the latest decision of the Supreme Court of Canada on the subject, *The King* v. *Lavoie* (2), where Taschereau J, delivering the unanimous judgment of the Court, laid down the governing rule as follows:

> Le contre-appellant soumet en second lieu, qu'il a droit à un montant supplémentaire de 10% de la compensation accordée, pour dépossession forcée. Ce montant additionnel de 10% n'est pas accordé dans tous les cas d'expropriation, et ce n'est que dans les causes où il est difficile par suite de certaines incertitudes dans l'appréciation du montant de la compensation, qu'il y a lieu de l'ajouter à l'indemnité. (*Irving Oil Co.* v. *The King* [1946] S.C.R. 551; *Diggon-Hibben Ltd.* v. *The King* [1949] S.C.R. 712). Ici, on ne rencontre pas les circonstances qui existaient dans les deux causes que je viens de citer, et qui alors ont justifié l'application de la règle. Il n'a pas été démontré qu'il existait des éventualités inappréciables et incertaines, impossibles à évaluer au moment du procès.

I must now decide whether the allowance should be granted in this case. The question is one of difficulty. The circumstances are, strictly speaking, not of the same nature as those in the cases to which Taschereau J. referred in the passage which I have cited, but they are unusual. The defendant is under a legal duty to maintain public Catholic Schools. The Reboul School was adequate for its purpose in the area which it served and there was no thought of disposing of it or erecting a new school. By the expropriation the defendant has been forced into an immediate expenditure for a new school which it would not otherwise have incurred at that time. On the whole, but not without doubt, I have concluded that the estimation of the amount of compensation involves sufficient difficulty and uncertainty to bring the case within the ambit of the rule in the *Lavoie* case (*supra*) and I make an additional allowance of $12,000 accordingly. This makes my total award come to $132,000. In granting the additional allowance I repeat what I have said in other cases that, in my opinion, the additional allowance of 10 per cent for forcible taking is an unwarranted bonus and that the granting of it should be prohibited.

(1) [1952] Ex. C.R. 113 at 131. (2) December 18, 1950, unreported.

There remains the matter of interest. The defendant has been in undisturbed possession of the expropriated property ever since it was taken without payment of any rent. Consequently, in accordance with the long established practice of this Court, it is not entitled to any interest.

There will, therefore, be judgment declaring that the property described in paragraph 3 of the Information is vested in Her Majesty as from March 19, 1947; that the amount of compensation money to which the defendant is entitled, subject to the usual conditions as to all necessary releases and discharges of claims, is the sum of $132,000 without interest; and that the defendant is entitled to costs to be taxed in the usual way.

Judgment accordingly.