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Mar. 10, 11.
Mar. 23.

THE KING, on the information of the Attorney-General of Canada, upon the relation of the National Battlefields Commission,

PLAINTIFF;

AND

THE QUEBEC SKATING CLUB,

DEFENDANT.

Expropriation—Market value—Title—Value to the owner—Servitudes

The defendant derived its title to the lands expropriated under a grant from the Crown subject to two conditions: (1) that the building now being or lately erected by defendant on said lands be such as would be suitable for exhibition purposes and available at all times for the same, and (2) that certain water pipes on the lands should be diverted and relaid outside the area of said building.

Held that as property may under certain circumstances have a specially high value to the owner over and above its market value, and as it is the value to the owner which the party expropriated is entitled to receive and as the above mentioned conditions or servitudes would be less onerous to the owner than to anyone else in the community, the market value of the property in question was not the proper criterion of the amount to be allowed him for the same. [Pastoral Finance Association Ltd. v. The Minister (1914) A.C. 1083 referred to.]

2. That the Crown having in its grant aforesaid described the property in question as bounded for a part by a street, as also in the Statutes of 1891 and 1911, in the description deposited in the Registry Office under the Expropriation Act, and in the Information herein, such statement was practically an "aveu judiciaire" that such a street existed, creating a servitude in favour of the land so sold. That it is a sufficient specification in writing of the nature, the extent and the situation of the servitude to meet the requirements of Art. 551 of the Civil Code of the Province of Quebec. [Roberge v. Daigneau (1926) S.C.R. 191 referred to.]

INFORMATION exhibited by the Attorney-General of Canada to have certain properties expropriated for the National Battlefields Commission valued by the Court.

Noël Belleau, K.C., and *L. E. L. Galipault* for plaintiff.

Louis St-Laurent, K.C., for defendant.

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

The facts and questions of law raised are discussed and set out in the Reasons for Judgment.

AUDETTE J., now (March 23, 1931), delivered the following judgment.

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This is an information exhibited by the Attorney-General of Canada, whereby it appears, among other things, that a certain parcel or tract of land, described in the information and belonging to the defendant, was taken and expropriated by the National Battlefields Commission, for the purposes of the National Battlefields Park, under the provisions and authority of the Act respecting the National Battlefields (7-8 Ed. VII, chs. 57, 58, as amended by 9-10 Ed. VII, ch. 41; 1-2 Geo. V, ch. 5; 4-5 Geo. V, ch. 46) and of the Expropriation Act, by depositing of record, on the 5th March, 1929, a plan and description of the same in the office of the Registrar of deeds for the Registration Division of the City of Quebec, in which Registration Division the said land is situate.

The area taken consists of a rectangular piece of land of three hundred by one hundred and fifty feet, making a total of forty-five thousand square feet, for which 50 cents a foot is offered, i.e., $22,500.

The defendant by its statement in defence avers that this offer is not sufficient and claims the sum of $49,500, that is, at the rate of $1.10 a foot.

Now in assessing compensation to be paid to a claimant whose land has been expropriated, the Court will look at the nature and character of the title as one of the criteria of value. *The Queen* v. *Carrier* (1).

The land in question formed part of Ordnance Property of Canada and by the Federal Statute 54-55 Vic., ch. 14 (1891) authority and power was given the Governor in Council to make a free grant of the said land to the Quebec Skating Club subject to such provisions and conditions as the Governor in Council deems proper. The preamble of this Statute recites, among other considerations, that the Club have undertaken and purpose, in the event of their receiving such grant, erecting thereon " a building suitable and which will be available for public exhibition purposes."

Under the Great Seal of Canada a grant of the said property was duly made in favour of the Quebec Skating Club subject, among others, to the following provisions and conditions, namely:

1st . . . . . .

(1) (1888) 2 Ex. C.R. 36.

2nd. That the new building which is *now* being or has lately been erected by the Quebec Skating Club upon the lands hereinbefore particularly described must be one which in the opinion of Our Minister of the Interior will be suitable for Exhibition purposes, and shall at all times be available for the same.

3rd. That the Quebec Skating Club shall take up the water pipe or pipes conveying water to the Laboratory and Fulminate buildings of Our Cartridge Factory, and shall, to the satisfaction of Our Minister of Militia and Defence, properly divert and relay such pipe or pipes around the outside of the said new building erected or being erected by the said Quebec Skating Club, and that We, Our officers, servants and workmen shall have the right of passage on, through, over and across the said lands and all other rights necessary in connection with the inspection, maintenance and repair of such pipe or pipes.

It may be well to mention at this juncture that such a building was duly erected and exhibitions held therein. However, the building was destroyed by fire in 1918 and the land has remained vacant ever since; but in 1911, by an Act of the Parliament of Canada, 1-2 Geo. V, ch. 5, the National Battlefields Commission was authorized to purchase certain other lands than those included in the Schedule to ch. 58 of the Statute of 1908, namely the very land in question in this case and for which expropriation proceedings are now duly resorted to.

In the result, it is quite obvious that in view of this 1911 Statute, the Club could not reasonably consider rebuilding upon these premises after the fire in 1918, and it is only recently that steps were taken to revive the Club and for that purpose they have acquired land in that neighbourhood, namely on Laurier Avenue, for which they paid $45,588.63 including the cost of buildings, besides the vacant lots; but with a title free from any conditions and encumbrances. The Statute of 1911 had the effect, after the fire, to dislocate the business of the Club, resulting in the delay in securing new premises under difficult circumstances. The old property now being expropriated contained 45,000 square feet, while the new one contains 41,640. The several lots of the latter property were bought at different prices and in the case of the Normandeau property they had to pay for the building thereon erected in addition to land, the whole as shewn on Plan exhibit B, and the statement filed of record giving the full details of these purchases.

The property in question must be assessed in view of the best uses to which it can be applied under circumstances

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consistent with the nature of the title. The defendants are entitled to a fair compensation to the extent of their loss, and that loss is to be tested by what was the value at the date of the expropriation of such parcel of land to them and not to the taker. *Sydney* v. *North Eastern Railway* (1); *Cedar Rapids Case* (2); *The King* v. *Lack* (3) and cases therein cited.

It is true that a property may under some circumstances have a specially high value to the owner over and above the market value to the rest of the community, and we have authority for that in the Judgment of the Judicial Committee of the Privy Council in the case of *Pastoral Finance Association Ltd.* v. *The Minister* (4). It can also happen, as in the present case, that certain conditions involving charges, easements or servitudes upon a property may be very much less onerous to the owner than they would be to any other member of the community, the result being that the existence of such conditions would adversely affect the market value; but again, in all cases, it is the value to the owner which is sought.

In the special circumstances of this case one must, in endeavouring to arrive at a proper compensation, always bear in mind that it is the value to the owner which is here sought.

Indeed, the conditions imposed by the Grant would have been almost impossible for any ordinary purchaser, for anyone of the public. No person, except the Club, would have sought a grant of the kind as the land could not have been used for ordinary purposes, that is for building lots, erecting a dwelling or even for gardening. But it is quite otherwise for the Club. The land as granted to them was indeed of a much greater value than it could be to a private individual. The fact of making their building available for exhibition, while to some extent an impediment or detriment to them is far from being a serious impediment in its nature, and so does not amount to much for the Club.

Then there is the question of the right of the Crown to lay pipes on the premises. That in itself did not seriously

(1) (1914) 3 K.B. 629, at p. 637.
(2) (1914) A.C. 569, at p. 576.
(3) (1920) 20 Ex. C.R. 113, at p. 116.
(4) (1914) A.C. 1083.

affect the Club in their use of the property but it is a detriment that would operate in decreasing the value of land, which would without it be worth more, and will have to be taken into consideration as well as the exhibition privilege, when coming to fix the compensation. These admittedly do affect the market value of the land but not to the extent contended by some of the witnesses, always from the standpoint of third parties.

It may perhaps be casually mentioned that all these conditions, easements or servitudes are now practically merged in the grantor and that the pipes are no more in use; but that does not affect the case, since it must be approached as if these were in full force and effect and which could, under the title, be exercised at any time.

There is this last question respecting the 135 feet between Grande Allée and the northern end of the property which it is admitted was never *procès-verbalisée*. In this respect it is well, first, to read the description of the property as given by the Crown through the grant. The description of this land—as well in the Statute of 1891, in the Grant, in the Statute of 1911 which refers to the description in the Act of 1891, in the description deposited in the Registry Office under the Expropriation Act and in the information—always refers to this first street and uses such street as a boundary to the land and that is repeated several times all through this description. Parliament by the Act of 1891 gave the defendant this land on the first street. This description is practically an *aveu judiciaire*. It is not in the mouth of the expropriating party, who after all represents the Crown, to say you cannot use that street as a street after deliberately stating all through that it is a street abutting on this land.

Under the decision of the Supreme Court of Canada in the case of *Roberge* v. *Daigneau* (1), it must be found that a servitude " par destination du père de famille " over these 135 feet has been created by such descriptions which are a sufficient specification in writing of the nature, the extent and the situation of the servitude, as required by Art. 551 C.C.

Having said so much there remains to be determined the amount of the compensation. And in that respect it

(1) (1926) S.C.R. 191.

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may be said that the evidence adduced in respect of the value of land has not been in any wise controlled by the questions of law above mentioned which must determine the controversy; that is, by what is sought in this case, the value of the land to the owner and not to the public.

Under all the circumstances, considering, as disclosed by the evidence, the prices paid on Grande Allée, in Laurier Avenue and in the vicinity, I am of opinion that a valuation of seventy cents (70c.) a foot is a fair and just compensation.

Therefore, there will be judgment as follows:—

1. The lands expropriated herein are declared vested in the National Battlefields Commission as of the 5th day of March, 1929.

2. The compensation for the land so taken and for all damages whatsoever resulting from the expropriation is hereby fixed at the sum of $31,500 with interest thereon from the 5th March, 1929, to the date hereof.

3. The defendant, upon giving to the National Battlefields Commission a good and satisfactory title, free from all mortgages, charges or encumbrances whatsoever—excepting however the charges and conditions above mentioned—are entitled to recover and be paid the said sum of $31,500 with interest as above mentioned.

4. The defendants are also entitled to the costs of the action.

Judgment accordingly.