

1931

May 6.
 May 27.

HIS MAJESTY THE KING..... PLAINTIFF;

VS.

GEORGE GORDON FROST..... DEFENDANT

Expropriation—Compensation—Conflicting evidence—Balance of probabilities—Evidence of price of neighbouring properties.

Held that where, in expropriation cases, the Court is faced with conflicting evidence of the optimists on the one hand and the pessimists on the other, it must be guided, in arriving at the true market value of the property, by the reasons supporting each witness' views, bearing in mind the soundness of the same, and the balance of probabilities.

2. That whilst the evidence of the price paid for properties in the neighbourhood is cogent evidence of value, such evidence must be approached with care and be regulated with reasonable judgment by

(1) (1902) 7 Ex. C.R. 287; 32 S.C.R. 532. (2) (1901) 7 Ex. C.R. 239

the Court, and cannot be based on common rumour or from hearsay. That class of evidence is only helpful when all the circumstances of such sales are clearly and exhaustively disclosed. Otherwise, it introduces a multitude of collateral issues, as no two pieces of land or property are ever exactly the same.

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INFORMATION by the Crown to have certain properties expropriated valued by the Court.

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

C. A. Payne, K.C., for plaintiff.

A. M. Fulton and H. D. Graham for defendant.

The facts are stated in the Reasons for Judgment.

AUDETTE J. now (May 27, 1931) delivered the following judgment.

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, belonging to the defendant, was expropriated by the Crown for the purposes of a public work of Canada, namely, an airport station, by depositing, on the 22nd day of October, 1929, a plan and description of the same, in the Registry Office, County of Hastings, at the City of Belleville, Ontario, in which county the said land is situate.

The area expropriated comprises a farm of 88½ acres with buildings thereon erected, an orchard and a patch of berries.

The plaintiff, by the information, offers the sum of \$11,588 as compensation for the said farm and the defendant, by his statement in defence claims the sum of \$32,315.

The defendant purchased this farm in 1920 for \$7,500 at a time when, some of the witnesses testified, farm lands were at their peak. Since acquiring this farm, the defendant expended a considerable sum of money for improvements, but many of these improvements are in the nature of maintenance, repairs, wear and tear and not in the nature of capital expenditure.

The values placed upon this farm as a whole, by the witnesses heard on behalf of the defendant, are as follows: Gordon Frost, the defendant, about \$30,000; Burke, \$20,000; Waldron, \$18,000; Reid, \$20,000, and Bush, \$22,000.

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While the values placed upon the same by the plaintiff's witnesses are as follows: G. Simmons, \$10,310; Weaver, \$9,775; Dr. Titus, \$8,500; W. Simmons, \$8,500.

There is a great gap between these valuations, a wide divergence of views and opinions as to what the market value is and as to how it should be estimated. The court, faced with this conflicting evidence of the optimist and perhaps the pessimist, must be guided by the reasons supporting each witness' views bearing in mind the soundness of the same and the balance of probabilities.

Much stress has been laid by Counsel for the Crown on establishing the compensation on the valuation of other properties in the neighbourhood. That class of evidence has been held by the courts to be quite cogent, but has been much criticized by some text writers on the subject of Eminent Domain. Such evidence must be approached with care and be regulated with reasonable judgment by the Court, because that evidence cannot be based on common rumour or from hearsay, and only when the witness has actual knowledge of the price paid and the circumstances of the sale. That class of evidence is only helpful when all the circumstances of such sale are clearly and exhaustively disclosed. Otherwise, it introduces a multitude of collateral issues, as no two pieces of land or property are ever exactly the same.

This property must be assessed, as of the date of the expropriation, at its market value in respect of the best uses to which it can be put, taking into consideration any prospective capabilities or value it may obtain within the reasonably near future. But it is only the existing value of such prospective capabilities at the date of expropriation that falls to be determined. *The King vs. Trudel* (1); *The King vs. Falardeau* (2).

There exists, perhaps, some contingencies or possibility of these farmers who own property on the Highway to occasionally sell some small lots on the front, or to the south, facing the Bay, but these lands obviously have not now reached the stage of being valued with the prospect of building lots. At the date of the expropriation they were all used for farming purposes. Moreover, there is

(1) (1913) 49 S.C.R. 501.

(2) (1913) 14 Ex. C.R. 265, at p 279.

an extensive marsh or swamp on the water front, on the Bay, which would seem to make the property undesirable for summer cottages.

Some of the witnesses on behalf of the defendant, and the defendant himself, have endeavoured to prove too much and in doing so they have weakened their testimony, in the result proving nothing.

This farm being situate close to Trenton and not very far from Belleville has the advantage of having a good market in the vicinity; but as a farm it is an ordinary farm with good buildings, and in some cases the buildings might be too expensive for a farm and may not add therefore anything to its market value. The farm has the great disadvantage of being crossed by a railway, which thereby severs the farm. The piece to the south is also severed by the Highway with its heavy and dangerous traffic. These severances act as a great detriment in the value of a farm, in that it makes it more difficult and expensive to operate and goes materially toward decreasing its market value. There is also some marsh land upon it.

It is impossible to fix the compensation with mathematical accuracy, but taking into consideration all the circumstances of the case and all legal elements of compensation whatsoever involved in this case, I have come to the conclusion to fix the value of this farm and the compensation with all damages whatsoever resulting from the expropriation, at the sum of \$12,390.

There was a tender made in this case, but no part thereof was paid to the farmer who was ousted from his farm and left to shift for himself—with his cattle and agricultural implements on his hands. The farm was taken and no money up to date was ever given to him. His whole business, his manner of living was recklessly dislocated. He had no money to purchase a new farm and was working on day labour or otherwise whenever he could get something to do. Under these circumstances there must, at least, be added 10 per cent to the amount of compensation, for the compulsory taking. Therefore the amount of compensation is hereby fixed at the sum of \$13,629.

Therefore, there will be judgments as follows:—

1.—The land expropriated herein is declared vested in the Crown, as of the 22nd October, 1929.

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2.—The compensation for the land so taken and for all damages whatsoever resulting from the expropriation is hereby fixed at the sum of \$13,629 with interest thereon from the 4th day of July, 1930—the date at which the defendant released possession of the farm—to the date hereof.

3.—The defendant, upon giving to the Crown a good and satisfactory title, free from all mortgages, charges and encumbrances whatsoever, is entitled to recover and be paid by the plaintiff the said sum of \$13,629 with interest thereon as above mentioned.

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

Judgment accordingly.