

1902  
 Jan. 21.  
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IN THE MATTER OF THE PETITION OF RIGHT OF  
 JAMES McQUADE.....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Public work—Injurious affection of property—Deprivation of access—Street  
 —Damages.*

By the construction of a public work, a public highway was closed up at a point two hundred and fifty feet distant from the suppliant's property which fronted on the highway. In the first expropriation of land in the neighbourhood, for the public work, no part of the suppliant's property was taken. Afterwards, and during the construction of the public work, a portion of his property was taken for the public work, and on the trial of a petition of right for compensation, the question arose as to whether or not the depreciation of the property by reason of the closing of the street or highway should be taken into account as one of the elements of damage.

*Held*, that it should be so taken into account, first, because it appeared that the depreciation from this cause in fact occurred subsequent to the taking of the land, and secondly, it was a case in which the suppliant was entitled to compensation for the injurious affection of his property by reason of the obstruction of the highway which was proximate and not remote. *Metropolitan Board of Works v. McCarthy* (L. R. 7 H. L. 243); *Caledonian Railway Co. v. Walker's Trustees* (7 App. Cas. 259); *Barry v. The Queen* (2 Ex. C. R. 333) referred to.

PETITION OF RIGHT for damages occasioned by the expropriation of certain lands for the purposes of the Galops Canal, a public work of Canada, and for damages occasioned by the construction of the canal to other lands held therewith.

The facts of the case are stated in the reasons for judgment.

October 17th, 1901.

The case was heard at Cornwall.

*D. B. MacLennan K.C.*, for the suppliants, cited *Paradis v. The Queen* (1); *The Queen v. Carrier* (2); *James v. Ontario and Quebec Railway Company* (3). He contended that the deprivation of access by the closing up of the street was a matter for compensation under the authorities.

*P. K. Halpin*, for the respondent, contended that the closing up of the street at a point two hundred and fifty feet distant from the suppliant's property was not such an element of damage as the court should consider under the authorities relied on by the suppliant's counsel.

THE JUDGE OF THE EXCHEQUER COURT now (January 21st, 1902) delivered judgment.

The suppliant, by his petition, claims a sum of seventeen hundred dollars and interest for compensation for the value of a piece of land of his taken by the Crown for the Galops Canal, a public work of Canada, and for damages to other lands held therewith occasioned by the construction of the canal. The Crown has tendered the suppliant and offers to pay to him the sum of six hundred dollars for the land taken and the damages occasioned, and the sufficiency of that amount is the issue raised by the pleadings.

The amount is, I think, sufficient if the suppliant is not entitled to anything for the depreciation that will be occasioned to the property in question by the closing of Dundas street on which it fronted. It is the amount at which Mr. Pope and Mr. Thompson, the Government valuers, put the depreciation in value of the property from causes other than the closing up

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(1) 1 Ex. C. R. 191.

(2) 2 Ex. C. R. 136.

(3) 15 Ont. A. R. 1.

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of this street, and it seems to me that from the standpoint from which they assessed the damages their estimate was sufficiently liberal. I think, however, that the suppliant is entitled to compensation to the whole extent that his property has been depreciated by the taking of a portion of it, and by the construction of the canal, the effect of which is to close up Dundas street at a point distant only two hundred and fifty feet from this property.

The portion of the suppliant's property expropriated was taken by the Crown on the eleventh day of March, 1899. Prior to that date the principal expropriation of land in the neighbourhood for the public work mentioned had taken place, and work on the canal which crosses Dundas street had been proceeding. If no portion of his land had been taken, the suppliant's property would eventually have been depreciated in value from this cause. But such depreciation had not actually occurred at the time a portion of his land was taken. The work of construction which causes the depreciation was in progress but it had not at that time had its natural effect, because with such construction there came a temporary increased demand for houses that tended for the time to maintain land values in the neighbourhood. The full effect of closing the street had not for the reason mentioned become manifest. The value of land taken for a public work, and the damages for injury thereto occasioned by the construction of the work must be assessed as of the time of the taking. But the compensation must be assessed once for all, and the depreciation that will probably arise in the future must be taken into account. In this case there has, I think, been a depreciation in the value of the suppliant's property since a portion of his land was taken, that is fairly attributable to the closing up of Dundas street by the construction of the

canal, and it seems to me that such depreciation is likely to be more manifest in the future. On the facts of this case this element of damage ought, I think, to be taken into account. Another reason for not excluding it is to be found in the fact that the obstruction of the public highway was at a point near to the suppliant's property. It was nearer than the interference that occurred in either *McCarthy's* case (1), or in the case of *Walker's Trustees* (2), in each of which cases it was held that the plaintiff was entitled to compensation. In the latter case the obstruction of the highway took place at a point two hundred and seventy feet from the plaintiff's mill, and in the former the access to the River Thames was obstructed at a distance of three hundred and seventy-two feet from the premises affected. In this view of the case the suppliant would have been entitled to compensation for the depreciation in the value of his property occasioned by the closing of the street on which it abutted, although no part of his land had been taken. Apart from the taking of land there would have been such an interference with his right to use the highway as would have given a right of action incident to his ownership of the property (3), and where such a right of action would arise the plaintiff is entitled to compensation for the injurious affection of his property. On both grounds mentioned, I think the suppliant is entitled to succeed.

I am of opinion, however, that many of the estimates of depreciation in the value of the property in question are exaggerated and excessive.

I assess the compensation to be paid to the suppliant for land taken and for all damages at eight hundred dollars, for which sum there will be judgment for him,

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(1) L. R. 7 H. L. 243.

(2) 7 App. Cas. 259.

(3) See cases cited in *The Queen v. Barry*, 2 Ex. C. R. 333.

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with interest from the eleventh day of March, 1899.  
 He is also entitled to his costs.

Some time after the case had been heard an application was made on behalf of the suppliant to submit further evidence as to the date of the expropriation and of the actual obstruction of Dundas street by the construction of the canal, alleging that he had been taken by surprise, as the contention that he was not entitled to compensation for the depreciation of his property by reason of the closing of that street had not been raised in the pleadings. That application stood over to be disposed of when judgment was given. But, as the judgment is in that respect in his favour, there does not appear to be any reason for taking any further evidence, even if otherwise such a course of procedure had been proper, as to which no opinion is expressed.

*Judgment accordingly.*

Solicitors for the suppliant: *Maclennan, Cline & Maclennan.*

Solicitor for the respondent: *P. K. Halpin.*