

1912
 May 29.

HIS MAJESTY THE KING, on the
 Information of the Attorney General
 of Canada PLAINTIFF;

AND

ANDREW LOGGIE, ROBERT LOGGIE
 and FRANCIS P. LOGGIE DEFENDANTS.

Expropriation—Disused Shipyard—Method of assessing compensation.

Where an old ship-yard, not used as such at the time of expropriation, has been taken for the purposes of a public work, compensation should not be assessed on the basis of separating the various factors or component parts of the ship-yard and estimating their several values, but the yard must be regarded as a whole and its market value as such assessed as of the time of the expropriation.

EDITOR'S NOTE: See *The King v. Kendall*, 14 Ex. C.R. 71 and *The King v. New Brunswick Ry. Co.* 14 Ex. C.R. 491.

THIS was an information exhibited by the Attorney-General of Canada asking that a certain sum tendered by the Crown as compensation for the expropriation of lands at Chatham, N.B., for the purposes of the Inter-colonial Railway be declared sufficient, and that the lands were vested in the Crown.

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

The case was heard before the Honourable Mr. Justice Audette at Chatham, N.B., May 17th, 18th and 20th, 1912.

R. A. Lawlor, K.C., for the plaintiff.

W. B. Wallace, K.C., and *R. Murray*, K.C., for the defendants.

AUDETTE, J. now (May 29th, 1912) delivered judgment.

This is an information exhibited by the Attorney-Generaé of Canada, whereby it appears, *inter alia*, that

the Government of Canada has expropriated from the defendants certain lands and real property for the purposes of the new diversion of the Intercolonial Railway from Nelson to Chatham, in the county of Northumberland, N.B.

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The area taken is 94.681 square feet, and a plan and description of the same were deposited in the office of the registrar of deeds for the said county, on the 21st day of September, A.D. 1910.

The defendants' title is admitted.

The Crown tenders the sum of \$18,150.00 for the said land and real property and for all damages resulting from the said expropriation.

The defendants aver by their plea that the amount tendered is not a sufficient and just compensation, and claim the sum of \$125,000.00.

As will be seen by looking at the expropriation plan, filed as Exhibit No. 1-a, wherein the 94.681 square feet expropriated are shewn within the red line—the front part, facing on the Miramichi River, is of 295 feet, extending to the South in irregular shape. There are upon the part expropriated, nine wooden buildings respectively marked on the said plan from 1 to 9. The line of expropriation passes almost in the centre of building No. 8, which has been partly removed and rebuilt and extended at the western end. Building No. 9 has been entirely removed.

The properties taken are situated on the water front in the town of Chatham, and are the remains of a property which was equipped and used for ship building on the Miramichi River, in the days gone by when the trade was all done in wooden bottoms. The trade has now, as is well known and established by the evidence, been superseded by iron ships, the steamers. The last ship which was built in this ship yard was launched

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in 1870 or 1868, and at that time the wharf at the front, only extended to the western end of the building No. 6, —the part starting therefrom and upon which is now building No. 7, having been built since 1870. The dwelling house, No. 2, was built since 1870. No ocean going steamers ever came or can come to this wharf. The timber to the west, according to witness Bernard, was only used for the purposes of the shipyard, for ship building.

The evidence with respect to the value of each of these wooden buildings was adduced by defendants' witnesses John McDonald and Patrick Troy, and they both arrived at a total valuation of \$13,983.39. The first witness says the buildings are perfectly sound above the sills, but that the latter are considerably depreciated, and that twenty five per cent. of that value would put them in a first-class state of repair. The other witness, Patrick Troy, who gives the same valuation, says he valued what it would cost to put them up and deducted twenty-five per cent for deterioration. For building No. 3, he adopted and took entirely McDonald's figures, and he gives us in what state of repairs the buildings were. He further said they used a quotient or ratio from 7 to 8 cents per cubic foot, to arrive at their value, and adds he does not know the value of property at Chatham.

The value to be ascertained here with respect to these buildings is not what it would cost to erect them anew, as above stated; but, what is their market value in the condition in which they were at the date of the expropriation? Most of these buildings, with one or two exceptions, are very old. The fish store was only built after 1870, but all the others, with the further exception of Numbers 1 and 2, were built before that date.

Now a good test of the valuation of these buildings would be the following,—Mr. Robert Loggie says, in his evidence, he put up building No. 1, four or five years ago, at a cost of about \$400 to \$500. What is the valuation put upon that building by witnesses McDonald and Troy? They place a value of \$819.84 upon this building. Their valuation is obviously unreliable. Their valuation for all the buildings is \$13,983.39, and that of the Crown's witnesses ranges from \$8,535.00 to \$8,800.00.

How much reliance can there be placed on the extreme valuation of the defendants' witnesses. The inference is obvious,—they are astray and proceeded upon a wrong principle. And one would only have to cast a cursory eye at the buildings to make this statement without any hesitation, and as the Court has had the advantage of viewing the premises, in company with counsel for both sides, it obviously and necessarily comes to that conclusion. The photographs filed as exhibits would also convey the same idea.

Coming now to the valuation of the property on behalf of the defendants, we find two classes of valuation. One valuing the property as a whole, and another assuming certain facts and valuing it in the abstract, if that expression can be used.

[His Lordship here reviewed the evidence of certain witnesses on both sides.]

The valuation by the witnesses of the Crown is on a basis of four, five and ten cents a superficial foot. If part of it is wharf property and valued at such, this ratio is too low. No doubt some of it is wharf. While on the one hand the Crown's valuation is rather low, that of some of the defendants' witnesses is extravagant.

This property was purchased in 1897 by the defendants for the sum of \$6,125.00, and the deed of

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purchase covered much more land than that taken by the expropriation,—it extended,—as will be seen on plan Exhibit Number 1-a, from the southern and western red lines to the points marked between E and F. And this portion not expropriated embodied valuable buildings such as the Babineau hotel, which is a stone building three stories high, and also the Wyse property. Robert Loggie says they considered the price low and they bought it with the idea of using it for the purposes of their business. It is perhaps well to mention here the bulk of defendants' business is carried on at Loggieville, and that further the defendants have another wharf at Chatham, which they use in connection with their business.

Now is there any justification for arriving at a valuation on the basis disclosed by some of the witnesses, that is on the assumption, such as witness Murdoch and others did, that the whole of that expropriated piece is all wharf, made of the best material possible, of large pine timbers as could not be got in the present days, and that it was mostly filled with stone? This must be answered in the negative. Benjamin Flood, a resident of Chatham, 65 years old, who has known the place ever since he was a boy,—has worked in the shipyard, because it was formerly a shipyard—testified that large ships were formerly built at the back and west of the new portion of the wharf. He says there was never any wharf at the back of building No. 7 to the south; and further that there was no wharf on the westerly end of the property. To the south, he says, before the erection of the new westerly part of the wharf, there was no wharf behind; but there were tiers of timber in the shipyard upon which ships were placed. Then the moulding-house was not built on a wharf, but it was erected on a timber foun-

dition. All of this was before 1870. The trade has now changed—and, as I have already said, the wooden ships have been superseded by steamers. He testified that he never saw an ocean going steamer lying at the defendants' wharf.

Then speaking as to the condition of the wharf, he says the front of it is all rotten, and liable to cave in at any time. Top spruce has been put on at some date to repair it,—he considers the land ties rotten, the iron bolts are exposed and some of the face is worn out. The facing, although dilapidated, is helping to hold up the wharf, which is pretty badly rotten between high and low tides, but not below.

This state of things described by the witness is also corroborated by the photographs filed of record as Exhibits 3 to 7; and the Court would say, that after viewing the property as above mentioned, it has absolutely gathered the same impression. It is the remains of a property fitted at one time as a shipyard; and when some of the witnesses assume that it was all wharf property, because of the test pits bored at the back showing timber which were nothing but stringers or tiers of timber upon which the ships were built,—they are valuating the property upon a wrong basis,—they are in error and their abstract calculation cannot be a guidance in arriving at a sound conclusion. Most of the witnesses, it may even be said, have fallen into this fallacious assumption. The most satisfactory valuation is perhaps that given by a business man, Mr. Snowball, a resident of Chatham, alive to the needs of the commercial community, having known this property for a long time and knowing the purposes to which it could be put. He also valued it as a whole on the basis of its market value. It may perhaps be well to recite here a portion of his testimony, viz.:—

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“THE COURT—Supposing the whole of that property
 “ as it stood before the expropriation, that part that you
 “ have before you on the plan, with the buildings, the
 “ land, the wharves—if that were put on the market
 “ in Chatham, what would that property fetch?

“ A.—I would not be able to answer that for the
 “ reason that I don’t know who would want a wharf.

“ THE COURT.—Then the market for such a property
 “ is limited?

“ A.—Yes. What a party might pay under forced
 “ circumstances I don’t know.

“ THE COURT.—You don’t know that there is any
 “ market just now for such a property?

“ A.—I don’t know that there is a market at the
 “ present time for such a property.

“ THE COURT.—Suppose that the property was adver-
 “ tised for sale, what do you think it would be worth—
 “ including its location?

“ A.—If you take the demand for the property, it
 “ would be doubtful just what it would bring in a way.
 “ What it would be worth to a man who was going to
 “ do a similar kind of business to Loggie?

“ THE COURT.—If you wanted to sell your house
 “ to-morrow, you will have to take the market value
 “ for it.?

“ A.—If I was forced to sell it.

“ Q.—You want to sell it. You are not using it.
 “ You want to get rid of it. What is the best price
 “ you can get for it?

“ A.—Valuing that property in the same way as I
 “ valued my own, in connection with a going concern?

“ THE COURT.—That is not the question. If it were
 “ put on the market, what would be the market value
 “ of it. You say the market is very limited?

“ A.—Yes.

“ Q.—Supposing you wanted to get rid of it, what do
 “ you think it would fetch on the market with a limited
 “ number of purchasers. You can always find a price
 “ I suppose?

“ A.—I don't know. If that property was forced on
 “ the market to-morrow, and sold by any person, who
 “ who would feel disposed to buy it, except they were—

“ THE COURT.—What would it fetch at a bargain?

“ A.—If it were sold that way, I don't think it would
 fetch over \$15,000 or \$20,000.

“ THE COURT.—Take it now the other way—what
 “ in your estimation would a property of that kind be
 “ worth as it stands, if there was a market for it?

“ A.—That property should be worth in connection
 “ with a business, \$35,000—that wharf property with
 “ a frontage of 295 feet—should be worth \$35,000.
 “ It is a good deal bigger wharf than my own, but it is
 “ not in as good state of repairs * * * * *

It will also be well to make an excerpt from one of
 the witnesses of the other class to show what was in
 their mind when they made up their valuation. The
 following is taken from the evidence of the witness
 Burpee, when questioned by the Court, viz.:

“ THE COURT.—How old are you, Mr. Burpee?

“ A.—Sixty eight.

“ Q.—You have got a good idea of property in New
 “ Brunswick—you are a business man, and have been
 “ engaged in the timber business, and have been
 “ building right and left ?

“ Yes.

“ Q.—Does not this appear to you, this piece of
 “ work, as one that would have been built at some
 “ time past, when the necessity of trade would have
 “ been different from that of the present time?

“ A.—Yes.

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“ Q.—Some ship-building yard or something of that kind?”

“ A.—Yes.

“ Q.—We want to know what a property of this kind, having come into the hands of owners of the present day—what is its marketable value if it were put on the market today, what would it fetch?”

“ A.—I could not tell you that at all.

“ Q.—Your ability as an expert is in the abstract, unless after your examination of the several timbers that lie there, you are able to say what it would cost to build up a similar class of work?”

“ A.—Yes. I made up just what I could put a wharf there for.

“ Q.—Leaving aside your business ability as a contractor, and using your common sense and general knowledge, do you think that a property of that kind today would fetch a price that would be made up on that basis. As a matter of fact using your own common sense, do you think that a purchaser today would give such a price for this property as it stands, by arriving at it in the way you arrived at it?”

“ No; I don't think it would fetch that to put it on the market.

“ Q.—Have you any idea, from your knowledge of the value of Chatham property particularly its wharf front property—have you any idea what it would fetch, its commercial value?”

“ A.—No. I have not the least idea.” * * *

There is no direct and substantial evidence of how many feet of wharfage there are on the property. Some parts have been measured and the balance has been assumed. How deep did the crib work go, and how was it filled,—we have only casual observations from what can only be termed cursory inspections.

We have in this case evidence adduced on behalf of the defendants for finding from \$141,801.39, graduating down to the sum of \$60,000, under Mr. Loggie's evidence; and from \$15,000 to \$35,000 in the light of Mr. Snowball's evidence—and finally to \$18,150 under the Crown's evidence. Rather a large range to travel through. However, the Court has no difficulty or hesitation in face of the evidence, and from the advantage it had in viewing the property, to discard these abstract valuations, and to adopt as a guidance something more tangible in the class of evidence adduced by Mr. Snowball.

The Court has come to the conclusion that this property must be assessed on its market value with the best uses to which it can be put by its owners,—that is, an old discarded ship-yard, slightly repaired at times, with all of its prospective capabilities at the date of the expropriation. It is contended by some of the witnesses that the railway is of some advantage to the property, and there is no doubt also that the balance of the property owned by the defendants, formerly held in unity with the part expropriated has been depreciated in value by the expropriation and by being deprived of its water front. Under all the circumstances of the case, the Court has come to the conclusion that the sum of twenty-five thousand dollars, to which should be added the usual ten per cent. for compulsory taking, is a just and fair compensation for the lands taken, real property, buildings and all, together with all damages present and future resulting from the said expropriation.

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

1st. The lands and real property taken herein are declared vested in His Majesty The King from the date of the expropriation.

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2nd. The compensation for such land,
 real property and damages is fixed at the
 sum of.....\$25.000.00
 To which 10% should be added for com-
 pulsory taking..... 2.500.00
 Making the total sum of.....\$27.500.00

And the said defendants are entitled to be paid the
 said sum of \$27,500 with interest thereon at the rate of
 five per cent. per annum from the 21st day of Septem-
 ber A.D. 1910, upon giving to the Crown a good and
 sufficient title and a full release for all claims for dower
 in the said land and real property by Alexandra Loggie,
 wife of Robert Loggie, and Ruby Loggie, wife of
 Francis P. Loggie.

3rd. The costs of the action will be in favour of the
 defendants and are hereby fixed at the sum of four
 hundred dollars.

Judgment accordingly.

Solicitor for the plaintiff: *T. W. Butler.*

Solicitor for the defendants: *R. Murray.*

