

Coram TASCHEREAU, J.

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WILLIAM CHARLAND (CLAIMANT).....APPELLANT; June 16.

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

*Expropriation of land for the purposes of a Government railway—Potential advantage of railway to remaining property.*

On appeal from an award of the Official Arbitrators, the court, in assessing the amount of compensation to be paid to the owner, declined to take into consideration any advantage that would accrue to the property if a siding connecting the property with the railway were constructed, as there was no legal obligation upon the Crown to give such siding, and it might never be constructed.

**APPEAL** from an award of the Official Arbitrators.

The claimant, a portion of whose property had been expropriated for the purposes of the St. Charles Branch of the Intercolonial Railway and the residue thereof injuriously affected by its construction, put forward a claim against the Dominion Government for damages so sustained by him, amounting to the sum of \$37,273.00. This claim was referred to the Official Arbitrators for investigation and award, and, having taken evidence on behalf of both parties, they awarded the claimant \$4,155.61 with interest from the date of expropriation.

From this award the claimant appealed to the court.

The appeal was heard by Mr. Justice Taschereau upon the evidence before the Arbitrators and new evidence taken before himself.

*Belleau*, Q.C., for claimant;

*Hogg* for respondent.

TASCHEREAU, J. now (June 16th, 1887,) delivered judgment.

In this case the claimant, owner of a ship-yard at

1887 Lévis, had 31,776 feet of his land expropriated for the  
 CHARLAND use of the Intercolonial Railway.

v. THE QUEEN. The amount claimed is \$37,273, the amount tendered  
 was \$1,898. The reference to the Arbitrators is dated  
 REASONS 26th May, 1884, and on the 16th May, 1885, the sup-  
 FOR pliant was awarded \$4,155.61 with interest from date  
 JUDGMENT. of expropriation, viz. : August 1st, 1883.

The present appeal is by the claimant.

There were in all three lots (A, B and C) expropriated. The following is a summary of the evidence on behalf of the claimant :—

Narcisse Rosa testifies that lot A contains 11,481 feet, of which 7,761 were expropriated,—leaving 3,780 feet south of the railway of no use to the claimant. On this lot there was a reservoir which was destroyed by the railway. There is difficult access to the property since the railway was built. He estimates \$1.20 per foot for land expropriated.

As to lot B, he says 4,436 feet were expropriated on which a shed has been demolished, value \$650. He estimates the land in this lot at 45 cents per foot.

As to lot C, this lot has a total area of 42,258 feet, whereof 16,639 feet have been expropriated ; leaving on the north an irregular lot of 17,621 feet, and one to the south of 8,828 feet. He values the land expropriated here, including damages, at 42 cents per foot.

On cross-examination this witness values the whole property at 18 cents per foot.

As to the tannery, he says it was worth \$10,000 at the time of the expropriation, and he estimates the damages at \$8,000 or \$9,000.

The value of the reservoir, in his opinion, is from \$1,800 to \$2,000 ; and the damages resulting from the obstruction of three streets, he puts at \$3,000. He thinks the fire risk has been increased.

H. Moore values lot A at 90 cents a foot, of which

2,250 feet are rendered valueless by the expropriation, loss 90 cents. On the hill he says, 1,530 feet are left which were worth, prior to the passing of the railway, 90 cents, now only worth 12 cents. The loss of the reservoir he puts also at \$2,000.

Lot B, he values at 50 cents per foot, and the shed at \$500 or \$600.

He has known lot C for a long time, having been foreman in the adjoining yard. This lot he values at 40 cents a foot, especially on account of the stream. The damages to the tannery he puts at \$9,000.

Joseph Jolicœur of Lévis, carpenter, says he would value lot A at 90 cents before the railway, and what is left south is now almost useless. It would cost \$2,000 to replace the reservoir on lot C. Two streets, viz.: Couillard and Joliette, are completely blocked, and he estimates the damage arising therefrom at \$2,200.

Lot B, at the time of the expropriation, he says, was worth 50 cents per foot, a shed destroyed thereon was worth \$600.

Lot C, he values at 40 cents to 45 cents per foot. What is left to the south is now worth nothing. The difference in value between what is left north is, that what was worth 45 cents is now only worth 15 cents.

The damages to the tannery he estimates at \$9,000; and the actual cost of such tannery he puts at \$16,000.

Mr. Charland, sr. values lot A at 90 cts. per foot; loss of reservoir he puts at \$700. Lot B, he values at 50 cts. per foot, and shed at \$700. Lot C, at 45 cts. per foot. Damage to the tannery he puts at \$7,000.

Clément Giguère, ship carpenter, knows the property, having worked on it for years. Lot A, he values at \$1.00 per foot; the loss of reservoir at \$2,000. Lot B, 50 cts. per foot; the shed \$600.

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1887 Lot C, he puts at 45 cts. per foot, including damages.  
 CHARLAND As to tannery, he says the railway has caused it serious  
 v. damage.  
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Rigobert Bourget's evidence may be summarized as follows:

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Lot A valued at.....	\$ 1.00 per foot.
Lot B " " .....	.50 "
Lot C " " .....	.45 "

Damages caused by obstruction of streets..... 2,000.00

Charles Napoléon Robitaille's as follows :

Lot A.....	\$ 1.20 per foot.
Lot B.....	.50 "
Lot C.....	.50 "

Reservoir..... 2,000.00

Streets..... 2,000.00

Henry Black's as follows :

Lot A.....	\$ 1.00 per foot.
Lot B.....	.75 "
Lot C.....	.95 "

Streets..... 10,000.00

Tannery..... 8,000.00

Reservoir..... 2,000.00

Antoine Rousseau's as follows :

Lot C at 35 to 40 cts. per foot.

Shed \$450.

Street obstruction, he says, makes access difficult.

Raymond Blakeston values lot A at 75 cts. per foot, lot B at 40 cts. per foot. Shed on lot B at \$600, and lot C generally at 25 cts. per foot, but 40 cents per foot generally for expropriated land. The damages caused by obstruction of streets he puts at \$100 per year.

In his estimate he did not include fire risks, and has no knowledge of the reservoir. He was receiving \$10 a day from the Government.

Joseph Gingras gives evidence as to the decrease of ship-building. He thinks there is lots of room for the tannery, but puts no valuation upon it; and he knows little about the property, except what knowledge he has acquired in his visit for the purposes of this case.

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Arthur Levesque proves that the shed is worthless; he values it at \$30, and says the means of egress are not as good as before.

J. B. Bélanger states that the shed is worth but \$100; and Herménégilde Bourassa was heard as a witness to prove the valuation rolls of the corporation.

Isidore Bégin, a farmer, states that the railway is no disadvantage, and values land at 10 cts. a foot. Roads are better since the railway. He compares this property with other properties abandoned for ship-building purposes, he admits he does not know as much of the value of a ship-yard as he does of building lots. He considers the railway an advantage because he thinks the Government will give claimant a siding.

He does not know about risks from fire.

Joseph Lavoie says the railway is no nuisance, but he had never been on the property before the week prior to giving his evidence.

Amable Savard thinks the railway no nuisance. He gives no figures.

Alphonse Demers puts lot C at 6 cents per foot. He does not know much of the value of such properties.

George Lemelin, a store keeper of St. Roch, Quebec, but who was formerly a ship-builder, says he visited the property twice for the purpose of giving evidence. He thinks the yard is now large enough for a tannery, and values the damages at \$630 for all. He was brought as a witness by Berlinguet. He thinks the railway an advantage with a siding.

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Olivier Rochette, tanner, says the railway does not interfere with claimant's tannery, and would consider it an advantage with a siding.

Louis Julien, tanner, corroborates the last witness.

Gaspard Germain, tanner, says he visited the ground with Rochette and Julien, and that, with a siding, the railway should be considered an advantage. Joliette street is bad and steep; he says lot C, in his opinion, would have been good land to dry leather on.

Benjamin Bilodeau says the reservoir is covered by railway embankment. The shed he values at \$100. He says the ground east of the tannery is swampy.

Désiré Guay, tanner, visited the property in company with other tanners. He says the railway is no interference with the tannery.

George Delisle, tanner, speaks to the same effect, as preceding witness.

Onésime Beaudoin visited the property twice for the purpose of giving evidence. He values ground expropriated at 5 cents a foot. Whole property worth \$12,000 to \$15,000. He thinks the railway an advantage, provided a siding is put in.

Edouard Demers, the agent for the Crown, says he made a tender of 6 cents per foot to claimant for the land expropriated, amounting to \$1,863.66 for property taken in that locality for the railway.

W. B. Mackenzie proves the tender of \$1,836.12.

Charles Guillaume Charland, and Guillaume Charland were called, but their evidence has no bearing on the case.

François Robitaille was also examined as to condition of the hills, and says they are good. The Joliette one was improved lately by Government.

Arthur Samson and Godfroi Bégin give similar evidence, but add that the railway might be considered a slight inconvenience.

In rebuttal, witnesses Germain Richard and Napo-  
léon Marquis were examined as to swampy nature of  
the ground east of the tannery.

William Lambert says since the hill has been  
repaired by the Government it is much better, but he  
is still of opinion that claimant suffers inconvenience  
from the crossing of the railway.

Joseph Jolicœur corroborates what the last witness  
says, and says a sum of \$200 a year would compensate  
claimant, but on cross-examination his estimate  
vanishes.

John Hugh Powell says that with the hills as at  
present, the claimant is damaged some \$300 or \$400 a  
year.

Upon this evidence, I have come to the  
conclusion that claimant is entitled, on lot A,  
to 7,701 feet at 50 cents.....\$3,850.50  
Reservoir destroyed..... 500.00

\$4,350.50

In the 50 cents I include damages to 3,970 feet of  
land rendered almost worthless, also damages from the  
crossing of the railway track and risks of fire.

As to lot B, I allow 4,436 feet at 25 cents...\$1,109.00  
Shed destroyed..... 100.00

\$1,209.00

And on lot C, I allow 19,639 feet expropri-  
ated at 20 cents.....\$3,927.80  
Damages to 26,549 feet at 5 cents..... 1,327.45

\$5,255.25

This includes damages to tannery.

The total therefore is \$10,814.75. As to any advan-  
tage arising to the property from the railway, all the  
witnesses who express the opinion that the railway is  
an advantage do so upon the condition that the rail-

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way authorities will give a siding to claimant on his property. Now he is not entitled to it, the railway has never offered it, and he will probably never get it.

It must be remembered that he had the benefit of the railway before this expropriation, although the station was then one mile further away than the new one.

As to the valuation rolls and the law points raised in this case, I refer to what I said in the *Paradis* case (1).

The appeal will therefore be allowed with costs. The award will be increased to \$10,824.75 with interest from date of expropriation (15th August, 1883), and the claimant will have the costs of arbitration.

*Appeal allowed with costs.\**

Solicitors for claimant: *Belleau, Stafford & Belleau.*

Solicitors for respondent: *O'Connor & Hogg.*

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\*On appeal to the Supreme Court of Canada by the Crown, the judgment of the Exchequer Court was affirmed.

PRESENT: Strong, Fournier, Taschereau, Gwynne and Patterson, JJ.

The following judgment was delivered by PATTERSON, J.

This appeal, like the appeal of *Guay* (2), is entirely upon the evidence. We are concerned with the judgment of the Exchequer Court, which increased the award of the Arbitrators from \$4,155.61 to \$10,824.75.

It cannot be said that the judgment is not fully supported by the evidence.

The estimates of the witnesses

on one side and the other differ very widely, and consistently with the evidence before the court, the amount awarded might have been very much less or very much more. The grounds on which the witnesses based their judgment also differed. I do not think there has been shewn any matter of principle in which the judgment is fairly open to blame, or any oversight of material consideration. In my opinion, we should dismiss the appeal.

STRONG and FOURNIER, JJ. concurred in the above judgment.

The following dissentient opinion was delivered by GWYNNE, J.— I have been unable to see in the evidence, in this case, sufficient to

(1) Reported *ante* p. 191.

(2) 17 Can. S. C. R., p. 30.

justify me in saying that I am satisfied that the Official Arbitrators have not, by their judgment, awarded to the claimant sufficient compensation for the land taken from him for the railway which has been constructed through his property, and for the damage done thereby to the land not taken. I do not know anything more difficult than for judges sitting on appeal to pronounce damages awarded in a case of this kind, by competent persons who have had an opportunity of inspecting the premises and extending the weight to be attached to the evidence of the several witnesses examined before them *vidé voce*, to be insufficient. My experience leads my mind to the conviction that arbitrators in these cases of expropriation, always lean, as I think is natural that they should, in favor of rather than against the owner of the property taken; and I think that their decision upon a question of the amount of compensation payable to such owner, is entitled to as much weight as would that of a jury be on a similar question; and I confess that I feel myself no more justified in increasing the damages awarded in the former case than I would in the latter.

The quantity of land taken in the present case from the claimant was in the whole about  $\frac{3}{4}$ ths of an English acre, out of a property containing about  $8\frac{1}{2}$  acres, used as a ship-building yard, on the shore near Lévis, in the Province of Quebec. The claimant, as is usual in cases of expropriation of land for public purposes, demanded the exorbitant sum of \$37,273.00, as the amount to be paid to him for the  $\frac{3}{4}$ ths of an acre taken and the damage done thereby to the land not taken, such amount being

much more than double the value of the claimant's whole property there situate, with all buildings thereon, as the same was assessed for municipal purposes. The Arbitrators awarded the claimant \$4,155.61 in full. Upon appeal to the Court of Exchequer, that court increased such sum to \$10,824.75; and from this latter judgment this appeal is taken.

Before the construction of the railway, the claimant's property from which the  $\frac{3}{4}$ ths of an acre was taken, was assessed at \$13,500, and, after the construction of the railway, at \$15,000. This increase in the assessed value, immediately upon the construction of the railway, would seem to afford some evidence that the railway had not depreciated the market value of the property. The witnesses, however, which were produced by the claimant, supported the claimant's demand; as is also customary in these cases, by placing upon the land taken and upon the depreciation alleged to be caused to the land not taken, not only an exorbitant value, but one which, from the variation in the estimates of the several witnesses, appears to be wholly speculative and not founded upon any substantial basis. This evidence, I confess, appears to me to be much less reliable than that arrived at by the yearly assessments made for municipal purposes. The latter may, it is true, not be always up to the full value of the property, but the experience, I think, of most persons, if put upon their oath, would be that the assessed value is more frequently too high than too low, and that the municipal authorities never do assess property so low as at half its par value, much less at  $\frac{1}{2}$  or  $\frac{1}{3}$  of

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what the claimant's witnesses declare to be the value of his property at its fair market value. It is said, on the other hand, that the evidence on the part of the Government is wholly unreliable and depreciatory of the claimant's property. That may be so, whether it be so or not I cannot say; but however this may be, I do not think it can be said to err on the side of depreciation as much as the evidence of the claimant's witnesses does on the side of exorbitant excess. The Arbitrators, however, were, I think, the proper persons to estimate this evidence, which

they had the advantage of doing upon inspection of the premises; and, for my part, I can only repeat that I can see nothing which satisfies my mind that the judgment they have pronounced is erroneous. I am of opinion that our judgment in the present case should be similar to that pronounced by us in *Paradis v. The Queen* (1), between which and the present case I can see no substantial difference.

The appeal, in my opinion, should be allowed with costs, and judgment given for the amount as awarded claimant by the Official Arbitrators.

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(1) Reported *ante* p. 191.