

1888
 June 30.

BENONI GUAY.....CLAIMANT ;

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

Expropriation of land for Government railway—Damage occasioned by want of crossing.

Where, upon the expropriation of land for the right of way of a Government railway through a claimant's property, a crossing over the railway is not provided by the Crown, damages will be allowed for the depreciation of his property resulting from the absence of such crossing.

THIS was a claim for damages arising out of the expropriation of a certain portion of land, belonging to the claimant Guay, situate in the Parish of St. Joseph, County of Lévis, P.Q., for the purposes of the St. Charles Branch of the Intercolonial Railway, and the consequent depreciation of adjoining lands of the claimant. The facts of the case are sufficiently stated in the judgment.

June 5th, 1888.

Belleau, Q. C. for claimant ;

Drouin, Q. C. and *Angers* for respondent.

BURBIDGE, J. now (June 30th, 1888) delivered judgment.

Two properties in the possession of the claimant were crossed by the St. Charles Branch of the Intercolonial Railway. One, that upon which his house and barn were situated, in two places ; the other, a woodlot, only in one. The property first mentioned contained about thirty-nine arpents ; the latter about forty-five. The former was, for a consecutive number of years except one, valued for the purposes of assessment at \$1,000 ; the latter at \$300. Only one witness,

David Charest, put a value on the first property as a whole, and he estimated its value at \$4,000. I hesitate, however, to follow his opinion, as he, at the same time, estimated the depreciation of the property by the construction of the railway at an amount exceeding the sum which the claimant demands for land and damages together, by nearly one-half of that sum. For the two pieces of land taken from this property, amounting in all to 1.77 arpents, the claimant, in his statement of claim, demands a sum of \$200, which I allow. I also allow him \$120, the amount claimed for 1.90 arpents of land expropriated on the other property.

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With reference to the depreciation of the property just mentioned, and apart from the evidence of Charest before referred to, one witness for the claimant estimated it at \$900 to \$1,000; one for the Crown, at \$200; two at \$500, and one at \$520.

The chief inconvenience is the difficulty in using the sub-way, which is constructed on the side of the hill, but, as one of the witnesses suggested, the hill is not steeper than it was before, though there must be considerable inconvenience as the passage must be made directly, and in a narrow place. I do not attach any considerable importance to what is said by some of the witnesses as to the difficulty in getting water for the cattle.

The depreciation of the wood-lot is caused by the absence of a crossing (1). The reason why the claimant was not given any crossing is not disclosed by the evidence. I think he was entitled to one, and that it could have been constructed for a sum much less than the lowest estimate of the depreciation in value of this property for the want thereof given by the

(1) REPORTER'S NOTE.—Under Crown to such effect, may order a crossing to be constructed, and the same shall go in mitigation of damages.

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witnesses. With a crossing the depreciation would have been inconsiderable. This depreciation is estimated by the Crown's witnesses at sums varying from \$200 to \$300, and by two witnesses for the claimant at \$500, including therein as well the value of the land taken.

I assess the compensation to be made in this case as follows :—

1.77 arpents of land taken from property,	
1st range.....	\$ 200.00
Depreciation of said property.....	500.00
1.90 arpents land taken from property in	
3rd range	\$ 120.00
Depreciation of last mentioned property....	250.00
	<hr/>
	\$1,070.00

To this sum will be added interest from June 8th, 1882, the date of the expropriation. There is no evidence of any tender, and the claimant is entitled to costs.

The compensation is, however, assessed in respect of an estate free from any charge or incumbrance ; and the amount of such compensation is to be paid to the claimant upon his giving a good acquittance for all interests that may happen to exist in or to the said property. Leave is reserved for either party, or any person interested, in case a satisfactory apportionment of the compensation money cannot otherwise be arrived at, to apply to the court for a distribution of the same.*

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

Solicitors for respondent : *Casgrain, Ange's & Hamel.*

*On appeal to the Supreme Court of Canada by the claimant, the amount of compensation awarded by the Exchequer Court was increased by the sum of \$100., the majority of the court being of opinion that damages had not been allowed for the depreciation resulting from the absence of a crossing.