

BETWEEN:

1915  
Sept. 7.

HIS MAJESTY THE KING, ON THE INFORMATION  
OF THE ATTORNEY-GENERAL FOR THE DOMINION  
OF CANADA,

PLAINTIFF;

AND

ALBERT HYACINTHE PETERS, ET AL.,  
DEFENDANTS;

*Expropriation—Re-instatement—Method of ascertaining value—Access destroyed  
—Market price.*

1. The re-instatement doctrine in expropriation cases ought not to be applied to the case of a mill which has been closed down for ten or eleven years before the expropriation.
2. Where a strip of land along the front of a property abutting upon a public street already encumbered with a railway track was expropriated together with the street itself, access to that part of the property being thus destroyed, it was held that a fair and liberal compensation should be assessed not only for the land taken but for all damages resulting from the injurious affection of the remaining land.
3. Every subject holds his property subject to the right of eminent domain reposed in the State, and the compensation which is guaranteed to the owner, whose property is so taken for public uses, is its fair market value at the date of the expropriation.
4. Certain land taken for a public work was the site of a discarded industrial enterprise with no hope of revival at the time of the taking. The unused building and plant connected with the enterprise gave no added value, but on the other hand the land had potential capabilities in a general way for commercial purposes by reason of its propinquity to rail and water-side.

*Held*, that damages ought not to be assessed on the basis of the former use of the property being restored, but in view of the general adaptability of the property for commercial purposes.

THIS was an information exhibited by the Attorney-General of the Dominion of Canada, for the expropriation of certain lands for the purposes of the

National Transcontinental Railway in the Province of Quebec.

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

The case came on for hearing before the Honourable Mr. Justice Audette, at Quebec, P.Q., on the 18th, 19th, 21st and 22nd of June, 1915.

*E. Belleau*, K.C., and *A. R. Holden*, K.C., for the plaintiff.

*F. W. Hibbard*, K.C., and *G. F. Gibson*, K.C., for the defendants.

AUDETTE, J. now (September 7, 1915) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, among other things, that a certain piece or tract of land, belonging to the defendants, was taken and expropriated, under the authority and provisions of 3 Ed. VII, Chap. 71, for the purposes of the National Transcontinental Railway, by depositing, on the 11th December, 1913, a plan and description of the said land, with the Registrar of Deeds, in the City of Quebec.

The defendants' title is not contested.

The Crown, by the information, offered the sum of \$44,911.00 and the defendants claim the sum of \$119,780.00

By this expropriation the Crown has taken a strip of land fronting on Prince Edward Street, 259 feet and five inches by 60 feet in depth, containing an area of 15,570 feet—the same being portions of lots 576A, and 577, of the official cadastre of St. Roch's Ward of the City of Quebec. This strip of land forms part of an old saw-mill property extending from Prince Edward

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Street to the St. Charles River, including the water lot therein, on the above mentioned width of 259 feet and 5 inches, bounded on the northeast by Grant Street, and by the Drolet foundry to the west.

Upon the whole property, which is composed of 111,800 feet, are erected a planing mill, saw-mill, engine room, boiler house, office and lean-to along part of the fence which, in the course of the evidence, is also called sheds. This saw-mill was built between the years 1861 and 1863—and the office, which was long ago used as a residence, was erected about the middle of the last century. The line of expropriation takes the larger part of the planing-mill and about 4½ feet of the front of the office.

Accompanied by counsel for both parties, I have had the advantage of viewing the premises and of going through the buildings in question.

Mr. S. Peters, the father, who built the mill, died in 1895, leaving Mrs. Peters, his wife, the usufructuary legatee of the estate who continued to carry on the business, through her son Albert, as manager and agent, up to 1904, when the business failed, and since that date the property never yielded any revenue. The mill has practically been closed from 1904 to the date of the expropriation, with the obvious result, like all other properties unused, that it is now in a very bad state. It was with a sad and painful impression I came out of the premises, having witnessed the ruins of what had been a large business undertaking. The floors of the mill buildings are literally all gone—rotten and unfit to be used with any degree of safety. Excepting the engine, the machinery is all rusted—large scales of rust falling off upon touching it.

There is upon this point very conflicting evidence indeed, and had I not had the advantage of viewing

the premises, I would decidedly have experienced great difficulty in reconciling such evidence—arriving at a proper appreciation of the state of the buildings upon the property. We have evidence on record estimating these buildings and machinery at inconceivably high figures, down to that evidence which says that the machinery is obsolete and only fit for scrap.

All of this is said with the view of stating that the value of this property as a whole is not of itself to be approached as a saw-mill only, because *per se* and as such it has no market value that would appeal to a purchaser. The property has a great value because of its situation for industrial purposes, of many kinds, but no more for a saw-mill than any other industries. It has the railway on one side and can be served by spurs, and it is bounded by the River St Charles. The defendants are owners of the water lots, upon which are still seen the remains of old wharves, also in a state of ruin. This property has an especial value by its potential prospective capabilities; but not on account of the buildings thereon erected. And that class of evidence establishing the value of the land taken, and the damages resulting from the expropriation at the sum of \$164 952.36, as shown by Exhibit "P"—involving the taking down of all the buildings and erecting them for the purposes of a saw-mill further back on the property, cannot be adopted as a scheme that any man with a capital to be invested would follow. That valuation is made, as witness Lamonde states, upon the value of a mill to be operated; but we must face the facts as they are. What we are seeking is the value of the property as it stood, on the date of the expropriation, after the business had failed and the mill been closed down for ten or eleven years.

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And that witness adds: In 1913, the market value (la valeur marchande) of the Peters property was stopped and cannot say what it was worth at that time. The land, of itself, on account of the situation is valuable; but the buildings standing upon it in their dilapidated state do not add much, if any, value to it, as some of the witnesses so truly said.

A deal of evidence has been adduced, reckoning the damages at very high figures on the replacement basis, or under what is known as the re-instatement doctrine. But such basis or doctrine does not obtain in the case of an industry which had been closed down for ten or eleven years. It was not a going concern at the date of the expropriation.

As appears by Exhibits "A," "B," and "C," there has been some correspondence, or options given, in respect of this property. Mr. Lockwell, by Exhibit "A," offered \$2.00 a foot for the whole property, land and buildings and this offer was refused. By Exhibit "B," it will appear that the estate, through Mrs. A. Peters, on the 18th April, 1912, offered the whole property, land and buildings, at \$2.50 a foot, and the same appears also by the option given to Mr. Dobell. It will be noticed that the owners themselves appear to have been acting upon the view above enunciated, and that is the market value of this property is to be approached as a whole and not as a saw-mill—or in other words, the land not distinguished from the buildings, and all erections thereon. They were willing to part with the whole property, lands and buildings at \$2.50 a foot and they could not find a purchaser at that price—\$2.00 a foot was the only offer.

Undoubtedly, when a strip of land is taken upon the front of a property, as in the present case, and where

the street upon which it is abutting is taken away, destroying access to that street, bad as it was with railway tracks upon it, it is a different proposition. And in a case of that kind, a fair and liberal price should be paid the owners for the land taken, for the buildings affected by the expropriation and for all damages resulting from such taking.

Every subject holds his property subject to the paramount right of "eminent domain" enjoyed by the State; but the compensation which is guaranteed to the owner, whose property is so taken for public purposes, is its fair market value at the date of the expropriation. *Dodge v. The King*. (1). And the best method of ascertaining such value is to test it by the sales of property in the neighbourhood.

Prices from \$1.00 to \$3.50 per square foot have been placed upon the land expropriated. The officers of the Transcontinental Railway seem, however, to have established the market price of the land, taken under similar circumstances, by what they have paid in the neighbourhood. They seem to have paid \$2.08 a foot to the Stadacona Co., and to the Dorchester Electric Co., \$2.05 a foot, exclusive of buildings.

I therefore think that the 15,570 feet expropriated should be valued or assessed at \$2.08 per foot

	\$ 32,385.60
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Coming to the planing-mill, it must be said that after taking about 33 feet of it, the remaining part is worth nothing, and the full market value thereof must be paid. It is valued as high as \$20,050, and for reconstruction at \$30,000, by some of the witnesses, and by others at \$3,000, and

(1) 38 S.C.R. 149.

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\$8,700, respectively. Witness Ratté say it could be built for \$8,700 and he would build it for that. And other witnesses say this building could be put up at eleven cents per cubic foot. Therefore, the value placed upon it, as it stood, at the date of the expropriation, by witness Giroux a \$9,792 seems about right, although in my estimation, on the liberal side. And I adopt that valuation, exclusive of the machinery, as fair and just and place it in round figures at.....

9,800.00

For the removal of the machinery from the planing-mill and placing it in its present state somewhere upon the property, or in a planing-mill erected upon the property. But its ultimate fate is to be sold for what it is worth, and that is very little.

2,250.00

Coming now to the building used for the office, while different valuations have been placed upon it, one cannot value it without some hesitation. It is in a very bad state of dilapidation, as will be partially seen by reference to Exhibit No. 4, a photograph of the front and one gable of the building. Mr. Gignace placed a value upon the same of \$5,000, but he qualifies it by adding for the proprietor—and his valuation like that of witness Lamonde, is with respect to a mill to be operated.

The market value of that building is very small. With 4½ feet taken from the front and the legal space for light taken over and above those 4½ feet, one

must arrive at the conclusion that the building must be taken down. I assess the value of the same at the sum of . . .

3,000.00

For the sheds or lean-to, the boundary fence of the property forming the back part thereof, a value has been placed upon the same of \$1,500 when new. Like the rest of the property, they show great age and are in a very poor state of repairs. I allow for the same, in the state in which they stood at the date of the expropriation. . . . .

600.00

The defendants have been deprived of the use of Prince Edward Street—and their property, which formerly was fronting upon that street is now fronting upon the right of way of the railway, leaving them without any exit or issue direct from the front of their property upon Prince Edward Street. Then there would be the legal space for light, if the defendants cared to build on the southern part of the property. It is true the former use of that street by the defendants, was not one without serious inconvenience. Indeed, all the trains coming out and going to the C.P.R. station were passing upon that street, upon which the railway tracks were laid. From the northeast side of their property, adjoining Grant Street, there is another source of damage, and that is, to cross Prince Edward Street from north to south and return they will have to pass over five or six double tracks instead of one track as formerly, and there will be gates on each side of the

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right of way to control the traffic, resulting obviously to the detriment of the defendants when using the same. However, a new road 75 feet wide will be opened from Grant Street to Ramsay Street, with the object of relieving the traffic. This road starts about opposite the yard-gate of the Defendants' property on Grant Street. This last street will go to mitigate and set off to a large extent the damages above referred to, but not altogether, and a certain amount should be allowed to cover generally this damage to the property. For the amount of the damages resulting from the taking away of Prince Edward Street, and the additional obstacles placed in the operation of Grant Street which are not quite set off by the new proposed road, I will allow 2% on the value of the balance of the property. That is, deducting 15,570 feet from the total area of 111,800 and calculated at \$2.08 per foot—in round figures.....

4,000.00

Making in all.....\$ 52,035.60

To this amount should be added 10% to cover the compulsory taking of this piece or parcel of land in the manner mentioned, against the will or desire of the owners—covering also all other incidental legal elements of compensation which may have been omitted.....

5,203.56

\$ 57,239.16

The wood-yard or piling ground, on the south side of Prince Edward Street forms no part of the present claim by the defendants, as their counsel clearly stated during the argument, that they did not claim any injury to the piling ground at all.

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Therefore, there will be judgment, as follows:

1. The land and property expropriated are declared vested in the Crown from the date of the expropriation.

2. The compensation is hereby assessed at the sum of \$57,239.16, with interest thereon from the 11th December, 1913, to the date hereof. The estate of Peters, the defendants herein, are entitled to be paid by the plaintiff, the said compensation moneys, with interest as above mentioned, upon their giving to the Crown a good and sufficient title free from all mortgages, hypothecs, encumbrances whatsoever—with leave reserved to all parties to apply to this court in case any difficulty arises with respect to the distribution of the said moneys.

3. The defendants are also entitled to the costs of the action.

*Judgment accordingly.*

Solicitors for plaintiff: *Belleau, Baillargeon & Belleau*

Solicitors for defendants: *Gibson & Dobell.*