

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

1915  
June 23.

PLAINTIFF,

AND

JOSEPH EUGENE BLAIS, PIERRE EDMOND  
BLAIS, JOSEPH ALPHONSE BLAIS, ED-  
OUARD VADEBONCOEUR AND ALFRED  
BLOUIN,

DEFENDANTS.

*Expropriation—Compensation—Residential property—Valuation.*

The re-instatement principle cannot be taken as the basis of compensation for residential property expropriated for a public work; nor can the prospective value of the property arising from the construction of the work be taken into consideration. The best guide is the selling value of similar property in the locality.

**I**NFORMATION for the vesting of land and compensation therefor in an expropriation by the Crown.

Tried before the Honourable Mr. Justice Audette,  
at Quebec, June 18, 1915.

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

*A. Dion*, for defendant.

AUDETTE, J. (June 23, 1915) delivered judgment.

This is an information exhibited by the Attorney-General, whereby it appears, *inter alia*, that certain lands, with buildings thereon erected, belonging to the defendants Blais, were expropriated under the

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authority of 3 Ed. VII., ch. 71, for the purposes of the Transcontinental Railway, by depositing a plan and description of the same, on June 27th, 1913, with the Registrar of Deeds within the Registration Division wherein the said lands are situated.

The defendants Vadeboncoeur and Blouin, respectively, held a mortgage upon the property. There is a *mainlevée* or release of the Vadeboncoeur mortgage (See Exhibit "C"), but the Blouin mortgage is still outstanding.

The area taken is 1,700 feet, upon part of which buildings are erected.

The plaintiff offers by the information the sum of \$7,246.70 and the defendants Blais claim the sum of \$20,000.

At the opening of the trial it was agreed that all the evidence, including the exhibits (excepting Nos. 1 and 2), adduced and filed in the case No. 2660, wherein His Majesty the King is plaintiff and Joseph Alphonse Blais *et al.* are defendants, were made common to the present case.

The property in question is composed of a piece of land of irregular shape, containing 1,700 square feet, upon which is erected, on Crown Street, a residence, and a small shed at the extreme back of the lot. This lot has 37.3 feet frontage on Crown Street and 9 feet at the back, with a depth of 72.6 feet at the deepest part, with a right of passage from the back to Gosford Street, upon the Canadian Pacific Railway property.

The defendant Eugene Blais, who was heard as a witness, says he is the one who has fixed the amount claimed at \$20,000 and he says it is the value of the property, adding that he values the same only as a private residence. He contends that we must not

calculate the market value (*la valeur marchande*), but that it is the value that the property will have in (*quelques*) some years. And he adds he takes the risk of waiting to realize his \$20,000. The house is veneered brick, front, gable and back, the gable being clap-boarded. There is only one door on Crown Street, used by both tenants. The tenant for the ground floor, composed of 4 rooms, was paying, in 1913, the sum of \$10 a month; the second floor and the attic, the house being 2½ stories high, had a tenant who was paying \$17 a month in 1913. There are 4 rooms on the second floor and 3 in the attic. These rents were free of taxes, which were borne by the proprietors. The house was built about 40 years ago and its municipal valuation is \$3,500 and has been valued, on the replacement or reinstatement basis, by one of the owner's witnesses at \$4,422. This last valuation is obviously erroneous, and arrived at upon a wrong principle. Indeed, what we are seeking here is the market value of the house in the state in which it stood at the date of the expropriation, and not what it would cost to-day to build a similar and a new house. The doctrine of reinstatement does not apply to a case of this kind.

The owners place a value on their property for the purposes of a residence. It is sufficient to look at the plan to realize that the fact of the railway passing, as it did, a few feet from the house, makes it undesirable as such and that it could never command a price as the one asked for such purpose or even for commercial purposes. It may be said here, as was said in case No. 2660, that great stress was laid, on behalf of counsel for the owners, upon the prospective capabilities of the property on account of the new market, etc., which will become operated

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when the Crown's works on the River St. Charles will have been completed. It is contended that while the property may not have the market price asked for at the time of the expropriation, that by holding it for some indefinite time it will, with time, acquire more value. This prospective capability appears upon the evidence to be too remote and distant, if it exists at all, and realizable at too far and too indefinite a future to be taken into consideration. And such value becoming exclusively speculative does not disclose the real market value at the date of the expropriation.

The Peticlere property immediately adjoining to the north, and one house removed from the railway, a property larger, both in the area of the land and the size of the house, built of similar material, was sold on August 25th, 1914, for \$8,710.35. Is not the best test of the market value the sale of similar property in the immediate neighbourhood? *Dodge v. The King*.<sup>1</sup>

After carefully considering the evidence and all the circumstances of the case, I am of opinion that the following compensation is fair and just, viz.:

The residence .....	\$3,600.00
The shed .....	75.00
The land at \$2 a foot—1,700 square feet..	3,400.00
And the right of passage to the back, allowing a tenant, of the class which that house calls for, to keep a horse and vehicle, with which he earns his living,—would be of quite an appreciable value. No evidence as to the value of this passage has been adduced, and I hereby fix it at the sum of.....	600.00

<sup>1</sup> 38 Can. S.C.R. 149.

To this amount should be added 10 per cent.

to cover all incidental expenses occasioned by the expropriation and for the compulsory taking against the will of the owners, who were desirous to hold the property for speculative purposes..... 767.50

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\$8,442.50

There will be judgment as follows, to wit:

1. The lands and property expropriated herein are declared vested in the Crown since June 27th, 1913.

2. The compensation is hereby fixed at the sum of \$8,442.50, and the defendants, Joseph Eugene Blais, Pierre Edmond Blais, and Joseph Alphonse Blais, are entitled to recover from the plaintiff the said sum of \$8,442.50, with interest thereon at five per centum per annum from the 27th day of June, 1913, upon giving to the Crown a good and sufficient title, free from all mortgages, hypothecs or incumbrances whatsoever upon the said property, the whole in full satisfaction for the lands and buildings taken and for all damages, if any, resulting from the said expropriation. Failing the said defendants to pay and satisfy the hypothecs or incumbrances upon the said property, the same shall be satisfied and paid out of the said compensation moneys and the balance paid over to the said defendants.

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

*Judgment accordingly.*

Solicitor for plaintiff: *J. J. Larue.*

Solicitors for the defendants: *Gelly & Dion.*

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