

1917
May 26.

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

PLAINTIFF,

AND

PARMENAS J. COTE,

DEFENDANT.

Expropriation—Compensation—Severance—Farm—Access.

Where the most serious damage from the severance of a farm resulting from an expropriation by the Crown is removed by the latter's undertaking to provide sufficient means of access across the expropriated property compensation must be assessed in view of such undertaking.

INFORMATION for the vesting of land and compensation therefor in an expropriation by the Crown.

Tried before the Honourable Mr. Justice Audette,
at Quebec, May 10, 1917.

V. A. de Billy, for plaintiff.

J. A. Gagné, for defendant.

AUDETTE, J. (May 26, 1917) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears that a certain piece or parcel of land, belonging to the defendant, was expropriated for the purposes of a public work known as "Point Martiniere Battery", in the County of Levis, P. Q., by depositing of record, in the Registry Office on December 16th, 1916, a plan and description of the land so taken.

The area expropriated, which is of 9,030 square feet, has been taken for the purposes of making a

road from the King's highway to the Battery in question, as the whole will more clearly appear by reference to the plan filed herein as Exhibit No. 1.

The Crown, by the information, offers the sum of \$200, and the defendant by his plea claims the sum of \$2,000.

As a result of the expropriation for this road, a large part of the farm, to the west, became *enclavé*, that is, a portion of the defendant's farm became separated from the east of his farm without access to it, being enclosed on all sides by the land of other owners. This indeed meant a serious source of damages. However, at the trial the Crown filed an undertaking, which reads as follows:

“The plaintiff undertakes to give to the defendant
 “in this case a right of passage across the lands
 “expropriated and described in the information,
 “the right of passage, which will be maintained by
 “the defendant, will have a width of ten feet and to
 “be situated at the points marked ‘Z’ and ‘X’ on
 “the plan Exhibit No. 1, filed in this case; the
 “plaintiff will also pay the cost of erection and of
 “maintenance of two gates, of good workmanship,
 “to permit the defendant to use said right of pas-
 “sage, and withdraw all previous undertaking, this
 “last one being the only one in force.”

This undertaking does away with the element of damages resulting in thus enclosing (*enclavant*) part of the farm. Another benefit derived from the undertaking is the fact that the Crown gives the defendant a right-of-way across the part expropriated and will erect and maintain gates at each side of same.

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This undertaking removes the most serious damages resulting from the expropriation.

The defendant's farm had already been visited by a previous expropriation, when the Crown took from the defendant a large portion of what is now indicated upon plan Exhibit No. 1 as "Militia Department." As a result of this first expropriation, the only access the defendant had from that part of his farm where his buildings are erected to the north-western part of lot No. 41 was by a narrow strip of lot No. 41 to the southwest of the piece then expropriated. And to communicate between these two parts of his farm he had to cross the road marked upon the plan as "Private road," and to open and close two gates.

By the present expropriation, which is a second invasion of the defendant's property, the defendant in travelling from one part of his farm to the other part, to the north-west, will have now to open and close 4 gates instead of 2, as he formerly had to do, notwithstanding that he has the advantage of taking and leaving his cattle, which pasture on the north-west, between these 2 sets of gates, to milk them during the summer months. However, he has to take them to the barn in the autumn and spring when they are not left out for the night. All of this constitutes damage for which he should be compensated together with the value of the land actually expropriated, which for the most part adjoins the Crown's property. In the winter all gates are left open and he can freely go to the north-western part of his farm for his fuel.

The Crown took possession of this land on or about August 25th, 1914; but the defendant has always, ever since this expropriation, crossed over the

piece expropriated to get access to the north-western part of his farm, as he used to do before such expropriation. He has therefore never suffered any damages for want of communication between one part of his farm and the other, and in the result, with the above undertaking, he will suffer none in that respect in the future, save and except, however, such damages resulting from the opening and closing 2 additional gates and crossing the new road, which will make the access less easy and less free than formerly.

For the land taken and for all damages resulting from the expropriation, the compensation is hereby fixed at the sum of \$375, always taking into consideration that the undertaking has removed the most serious damages complained of.

There will be judgment as follows, to wit:

1. The lands expropriated herein are declared vested in the Crown from August 25th, 1914.

2. The compensation for the land so taken and for all damages whatsoever resulting from the expropriation is hereby fixed at the sum of \$375, with interest thereon from August 25th, 1914, to the date hereof.

3. The defendant is entitled to recover from the plaintiff the said sum of \$375, with interest as above mentioned, upon giving to the Crown a good and satisfactory title, free from all hypothecs and incumbrances whatsoever, upon the said land so taken.

4. The defendant is further entitled to the performance and execution of the obligations mentioned in the undertaking above mentioned.

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5. The defendant is also entitled to his costs of the action as instituted.

Judgment accordingly.

Solicitors for plaintiff: *Bernier, Bernier & de Billy.*

Solicitors for defendant: *Gagné & Gagné.*