Supreme Court of Canada
The King v. Larivée, (1918) 56 S.C.R. 376
Date: 1918-05-07

His Majesty The King (Plaintiff) Appellant;

and

Magloire Larivée (Defendant) Respondent.

1918: April 18; 1918: May 7.

Present: Sir Charles Fitzpatrick C.J. and Davies, Idington, Anglin and Brodeur JJ.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

Expropriation—Fair market value—Generosity—Compulsory taking—10% allowance.

The Assistant Judge of the Exchequer Court, after reviewing the evidence, concluded: "Under all the circumstances of the case * * * a fair and generous market price for the area expropriated would be about eight to ten cents a foot, and to make it very generous compensation, I will make it ten cents a foot."

Held, that the element of "generosity" is not one which should enter into the arbitrator's or judge's consideration, when fixing the compensation to be allowed for compulsory purchase.

An allowance of ten per cent. of the award, for compulsory taking cannot be claimed as of right for all kinds of property and under all circumstances.

APPEAL from the judgment of the Exchequer Court of Canada, awarding, in expropriation proceedings taken by appellant, for the value of land expropriated, the sum of $47,080, being $39,800 for" 398,000 square feet, $3,000 for two buildings on the property and $4,280, being 10% for compulsory taking. The Supreme Court of Canada, allowing the present appeal, reduced the amount to $34,840 Mr. Justice Davies was of opinion to reduce it to $22,900 and Mr. Justice Idington to $26,540.

The material facts of the case are fully stated in the judgments now reported.

Amyot for the appellant.

Belleau K.C. and St: Laurent K.C. for the respondent.

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THE CHIEF JUSTICE:—I agree in the conclusion reached by Mr. Justice Brodeur and would allow the appeal in part with costs. Cross-appeal dismissed with costs.

DAVIES J.—This is an appeal from the judgment of Mr. Justice Audette of the Exchequer Court fixing the compensation to be allowed for a certain property of the respondent situate at Lauzon in the District of Quebec expropriated by the Crown.

The area of the land expropriated was 398,000 square feet and the compensation fixed by the learned judge was ten cents a square foot. There were two buildings on the property for which $3,000 was allowed. In all therefore $42,800 was allowed for the land and buildings and to this the learned judge added the sum of $4,280, being 10% for compulsory taking.

The appellant did not challenge the $3,000 allowed for the buildings or the interest allowance made. The sole questions were as to the allowance per foot to be made for the land and the 10% for the compulsory purchase.

The learned judge upon reviewing some of the evidence as to value concludes that

> Under all the circumstances of the case, taking into consideration that a large area is expropriated, a fair and generous market price for the same would be about 8 to 10 cents a foot, and to make it very generous compensation, I will make it 10 cents a foot.

In appellant's factum and in counsel's argument at bar five cents was submitted as the price which should be allowed.

Counsel for the respondent pressed certain offers which, it was stated in evidence by the defendant Larivée, had been made to him of $100,000 and other sums for the land expropriated.

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But the learned judge made no reference to these alleged offers evidently not considering them *bonâ fide.* Only one of the three parties who were said to have made offers was called as a witness (Lagueux), and his offer, if made at all, was after the expropriation had been made. From the report of the stoppage by the judge of the defendant's cross-examination, it was evident that he had concluded that the defendant's evidence, considering his age and infirmities, should not be accepted on the question of these offers. It appeared that if the other offers were made at all it was after the project of the dock had been determined on and its location fixed. Assuming their *bona fides,* they were mere speculative offers as to the compensation which might be allowed and not evidence at all of what, apart from the project of the dry dock, the market value of the land would be worth.

After considering all the facts, and evidence called to our attention, I have reached the conclusion that the offer of the appellant of 5 cents a square foot is a very reasonable and fair one and that the compensation allowed of 10 cents should be reduced accordingly.

I cannot see any grounds for allowing in a case such as this the 10% for compulsory purchase. The reasons which prevail and justify this 10% in many cases do not exist here and I would disallow this item.

Before concluding, I would again protest against "generosity" being an element entering into the arbitrator's or judge's consideration when fixing the compensation to be allowed for compulsory purchase. I am quite unable to find how much the learned judge added to the market value of the land taken in this case for generosity. He says a fair and generous market price would be about 8 to 10 cents a foot and to make it "very generous compensation" he would make it 10 cents.

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I would respectfully submit that the market value of the property to the owner when taken is the true test of the compensation to be allowed excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired.

The element of generosity is not one which should enter into consideration in determining the compensation. If allowed, it would simply mean the addition to the market value of the land such sum as the arbitrator or judge might in the goodness of his heart think it desirable to add, and penalizing the party expropriating to that amount.

I would allow the appeal with costs, and reduce the compensation to 5 cents a square foot disallowing the 10% for compulsory purchase and confirming the judgment as to the value ($3,000) to be allowed for the house.

IDINGTON J:—The respondent bought some land in Lauzonin 1897 at sheriff's sale for $1,475, and in 902 sold a lot thereout, of irregular shape, at a price which stated in argument, and not denied, would amount to two and a half cents a square foot.

The remainder of the land so bought by respondent which it is agreed by the parties amounts to 398,000 square feet, was expropriated in January, 1913, and the judgment of the Exchequer Court has awarded him therefor $47,880 including an estimated value for buildings of $3,000.

Deducting that estimate for buildings leaves $42,880 for the bare land.

I assume that the sheriff's sale may have been at a sacrifice price yet an award that gives the respondent who paid it thirty-two times as much for market price at the end of sixteen years is startling.

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I assume that the price of two and a half cents a foot for that sold in 1902 must be taken as the market value at that time. I cannot agree that the stipulation to build a good house was of such a character as to render the price named an untrustworthy guide to the value. Men buy land to build houses upon. And the purchaser in that instance had long and easy terms of payment with interest at 6% per annum.

It is alleged by respondent, however, that the sale had been bargained for two years before.

If I am right in' assuming that price to have been the market value in 1902, or 1900, as alleged, then this award can only be maintained as correct by finding that such property in Lauzon had, within eleven years, or thirteen if the bargain was made two years earlier, more than quadrupled in market value. It was a town of three thousand population and, like many such, practically stationary, as Mr. Charland admits, but yet had increased to four thousand during that time. It had long had an important industry in the shipbuilding and repairing line. We are not told how many hands employed. Respondent's factum modestly says a considerable number of workmen are employed there. Another old industry is that of manufacture of trunks and boxes. A more recent establishment of the same kind is mentioned. These seem to tell all there is of sufficient importance to be called large or substantial industries.

The evidence of actual market value at the time of the expropriation is unusually unsatisfactory.

It seems almost impossible to get witnesses testifying to values as of a given date when speaking three or four years after the given date, and when there has been in the meantime some great impulse given to the apparent progress of a town and hence a sudden

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rise in values, to bear in mind exactly what is wanted and distinguish accurately between past and present values. Even when the right question is put an ambiguous answer is given by one leading witness herein.

The respondent's witnesses in this case as a group hardly furnish an exemplary exception to the truth of these general observations. I am not surprised, therefore, to find that the learned trial judge has not accepted their opinions as his guide.

They have, besides their mere opinions, given a great many illustrations of transactions which, unfortunately, for one reason or another, can hardly assist us much in determining by comparison the market value of the property in question. And some of these the learned judge seems to assume might help to arrive at the truth.

I desire to test the matter by using the respondent's price for what he sold and another sale beside it.

Besides the part of the property sold by the respondent, there is one other transaction directly bearing upon the earlier value of that in question and that is a sale of lots in an adjoining plot, No. 6, said by Mr. Charland to be of substantially as good value as that now in question. It took place in 1905 and was a sale of twenty-nine lots at one cent per square foot.

Two slight difficulties arise in the way of possibly making too much use of this One is that the quality of the land is said by respondent to be inferior to that in question and that it has not the same advantage for needed drainage. The other is that the transaction was eight years prior to this expropriation.

Yet making all due allowance for the alleged difference in want of drainage facility, I think it is a fair index that property there had not increased since respondent's sale already mentioned, and of the value of property immediately beside that now in question.

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As a matter of common knowledge we know, or ought to know, that property in towns such as described and presenting no greater rate of increase than shewn, does not quadruple in value within eleven years.

Upon the advent of some great project likely to double the population very shortly, there may be found such rapid rises within very brief periods. But these exceptional cases can all be verified by clear and convincing testimony and the causes therefor explained. The extent to which these causes in any cases may have operated are also susceptible of lucid explanation.

We have no such evidence offered in this case. That presented of estimated value of the property in question has been so extravagant that the learned trial judge seems to have discarded it entirely.

I think he was right in doing so.

I cannot accept the theory that such properties as in question had quadrupled in value in Lauzon within eleven years. Much less can I accept opinion evidence which would require in some of the estimates put forward a rise in values based on such slow progress in the town that it would imply an advance in values of fifteen to twenty fold in eleven years, or even thirteen years. It rather seems to me that witnesses forget the actual foundations of real market values and the increase thereof.

At all events I cannot, in the absence of any better reasons than those given, accept such estimates, involving such rise in values as I have just pointed out.

There is also the municipal assessment for the property in question which was $2,100 for years 1906-1908 and 1910, then raised, in 1912, to $2,400, and after the expropriation was raised to $6,000.

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Assuming that it did not comply with the law and did not represent actual values, yet there is little doubt in my mind but that it would be approximately on the same low level throughout the town. If I am right in that, curiously enough Mr. Lagueux gives a piece of evidence that when applied destroys his high estimate. It is this:

He tells of buying a property valued by the assessor at $2,000, and selling part for $3,000. And then says he would not give what is left for $5,000. Assuming from these figures the reasonable deduction that the witness does not draw, but I do, that four times the assessed value is what might be expected for the property, and apply that to the assessments of this property now in question, would fix the value of it at about $9,600.

And yet we are asked to maintain a valuation of $42,800 for land alone and houses at $3,000, and add 10% for the cruel taking of it.

I really cannot believe that the assessor for so many years assessed this property, of such an attractive character as Mr. St. Laurent so well and ably painted it to us, at one-twentieth part of its value, and then, when he raised it, only added, at the dawn of better days, $300.

But when those better days had come he could yet find it worth only $6,000.

The respondent was one of those men whom nothing could change after he had made up his mind not to sell, and hence some could well afford to practice the joke of offering him a hundred thousand dollars knowing he would refuse it.

I notice they did not venture to lay down the gold less a year's discount and give the respondent a

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fair chance, or succeed in inducing the learned judge to accept the words as representing a sincere reality.

In argument counsel for appellant pointed out that the learned trial judge had made an error regarding the price of some larger sales and thus in effect misdirected himself. I assume that would have been denied if incorrect, and I think it quite possible the error of calculation may have led to error in the judgment.

Another test of the intrinsic worth of the property and the demands for more house room, is the fact that the houses were used only in summer, although appellant says one of them had double windows and was fit to live in during winter.

The learned trial judge has not accepted the views of any set of witnesses and has come to his judgment from a survey of the general evidence in the case.

Following the same lines I cannot accept his conclusions as to the value of the land and would cut the allowance for latter down to one-half what has been allowed therefor, including such additional percentage as he has added to value he finds, and reduce the amount of the judgment to $26,540.

I would therefore allow the appeal with costs and dismiss the cross-appeal with costs.

ANGLIN J.—I concur with Mr. Justice Brodeur.

J. BRODEUR:—Il s'agit d'un appel d'un jugement de la Cour d'Echiquier accordant une somme de $47,080 pour l'expropriation d'un terrain appartenant à l'Intimé et dont le gouvernement avait besoin pour la construction d'une cale sèche à Lauzon.

Ce terrain comprend 398,000 pieds et la Cour inférieure l'a évalué à 10 sous du pied. La Cour a

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accordé en outre 10% pour l'expropriation forcée (compulsory taking) et $3,000 pour les bâtisses érigées sur le terrain item. Il n'y a pas de difficulté quant à ce dernier item; il est reconnu que ce chiffre de $3,000 représente la valeur de ces bâtisses.

L'Intimé Larivée n'est pas satisfait du montant accordé pour la valeur du terrain lui-même et il demande per un contre-appel 50 sous du pied au lieu des dix sous qui lui ont été accordés.

Ce terrain représente une grande étendue de terre et a été acheté il y a quelques années par l'Intimé pour une somme assez modique. Il est incontestable que depuis il y a eu augmentation dans la valeur de la propriété en cet endroit. La preuve démontre que des terres d'assez grande étendue se sont vendues dans le voisinage pour être subdivisées en lots à bâtir. L'Intimé a prouvé que ces lots à bâtir s'étaient alors vendus jusqu'à 17 cents du pied. Mais l'honorable Juge de la Cour inférieure, et cela, je crois, avec raison, n'a pas voulu accepter ce prix de lots subdivisés pour établir la valeur marchande de la propriété de l'Intimé. Voici ce qu'il dit:

> A number of sales were referred to in the course of the trial, and deeds in respect of a number of these sales were also filed of record.
>
> With a few exceptions, most of the sales have reference to small building lots which sales represent no similarity to the piece of land in question in this case, which is composed of 398,000 sq. ft., and therefore would be a very misleading guide to follow.
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> However, from the evidence of promoters and real estate men heard as witnesses, it appears that large farms were bought, at Lauzon, not long before the expropriation, at three cents and four to five cents a foot when buying a large area; and, after passing through the usual process of promotion, by sale and re-sale to syndicates and companies at very large figures, compared with the original purchase price, these lands were afterwards placed upon the market and sold as small building lots

> at 14 and 17 cents a foot and perhaps more. It is not rational to use as apposite the value of these building lots, but it is the original sale for a large area that really offers similarity with the present case, and helps to reconcile and bridge the gap between the opinion evidence adduced by the plaintiff and the defendant respectively.

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Dans les circonstances, je crois que ces ventes en bloc constituent un meilleur guide pour déterminer la valeur de la propriété de l'Intimé que ces ventes de lots subdivisés.

D'un autre côté, la Couronne elle-même offre un prix plus élevé que celui payé pour les fermes mais moindre que celui payé pour les lots subdivisés.

L'Honorable Juge de la Cour inférieure a eu l'avantage d'entendre les témoins et il dit:

> A fair and generous market price for the same would be about 8 to 10 cents a foot, and to make a very generous compensation I will make it ten cents a foot.

Je comprends par cet extrait de son jugement qu'une somme de huit sous du pied serait une indemnité raisonnable. Je ne saurais, pour ma part, accepter le principe que ces indemnités doivent être basées sur une très grande générosité. Par conséquent, je considère que nous devrions réduire la compensation accordée à huit sous du pied.

Je suis d'opinion que l'appel devrait également réussir pour les 10% additionnels accordés par la Cour inférieure.

L'Intimé ne retirait qu'une somme de $285.00 de revenu par année sur cette propriété et il devrait s'estimer heureux de recevoir un capital de $34,840 qu'il pourrait placer facilement en bons de l'Etat ou autrement de manière qu'il retirerait de suite un revenu de près de $2,000 par année, c'est-à-dire près de sept fois plus que ce qu'il a aujourd'hui.

Il a été question d'offres de $100,000 qui auraient été faites à l'Intimé pour son terrain. L'une de ces offres aurait été faite par le témoin Lagueux; une autre par un nommé Légaré; et la dernière par un nommé Couillard.

M. Lagueux, dans son témoignage, nous dit qu'il

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a fait ces offres en mai 1913 c'est-à-dire après l'expropriation. Quant aux offres de Couillard et de Légaré, elles sont rapportées seulement par l'Intimé lui-même. Or, le témoignage de ce dernier, qui est un homme âgé, a été jugé si peu satisfaisant que le juge

a été obligé d'en interrompre la transquestion. On ne devrait donc pas y attacher d'importance. Quant à l'offre Couillard, il est incontestable que c'est après l'expropriation.

Pour toutes ces raisons, l'appel devrait être maintenu avec dépens de cette Cour et l'Intimé devrait recevoir comme indemnité

pour son terrain $31,840.00
pour ses bâtisses 3,000.00
Total $34,840.00

Le contre-appel devrait être renvoyé avec dépens.

Appeal allowed with costs.

Cross-appeal dismissed with costs.

Solicitors for the appellant: Drouin & Amyot.

Solicitors for the respondent: Galipeault, St. Laurent; Gagné & Métayer.