Supreme Court of Canada
The King v. Hearn, (1917) 55 S.C.R. 562
Date: 1917-06-22

His Majesty The King (Plaintiff) Appellant;

and

John G. Hearn and Others (Defendants) Respondents.

1916: October. 26, 27; 1917: June 22.

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

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

Expropriation—Market value—Prospective value—Evidence—Appeal by the Crown—"Expropriation Act," R.S.C. 1906, c. 148.

The appeal from the judgment of the Exchequer Court of Canada (16 Ex. C.R. 146) was allowed, Fitzpatrick C.J. dissenting.

Held, Where compensation awarded is so clearly and grossly excessive that it is manifest that the correct principles of valuation, though stated in the abstract have not been applied, interference on appeal is not merely warranted, but *ex debito justitiae.*

Per Idington J.—The cardinal rule to be observed in expropriation proceedings is to allow the market value only, except in cases where the taking has incidentally damaged the owner's business or other material interests; and the advantages to be derived from the construction of the works for the promotion of which expropriation is made must be excluded in determining such market value.

Per Brodeur J.—The indemnity to be paid is the value to the owner of the property expropriated and such value is determined by the advantages, present and future, of the property; but the actual value only of these advantages, at the time of the expropriation, must be taken into consideration.

Per Fitzpatrick C.J. (dissenting).—In an appeal to the Supreme Court from the award of an arbitrator, when the question of value has been fully discussed before him and no mistake of law Or fact is alleged, the mere suggestion that the amount of compensation is excessive or inadequate ought rarely to be considered a sufficient ground of objection to the award; and this principle must be applied with even more force in the case of an appeal by the Crown, the Exchequer Court being its own tribunal.

APPEAL from the judgment of the Exchequer Court of Canada[1], awarding, in expropriation

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[1] 16 Ex. C.R. 146.

proceedings taken by appellant, for the value of land taken and damages to parts of land adjoining, the sum of $133,976.03. The Supreme Court of Canada, allowing the present appeal, reduced the amount to $81,767.60.

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

Gibsone K.C. and Dobell for the appellant.

Stuart K.C. and St. Laurent K.C. for the respondents.

THE CHIEF JUSTICE (dissenting)—By the "Expropriation Act" (R.S.C. (1906) ch. 143), Parliament has authorized the Attorney-General, in any case in which land is acquired, for any public work, to exhibit in the Exchequer Court an information which shall be deemed the institution of a suit, and in and by which the compensation to be paid shall be ascertained and all claims, other than such as may be allowed, shall be barred. But though Parliament has set up this special machinery for reference of claims to compensation to the court which it has erected for the adjudication of claims against the Crown in right of the Dominion, yet the proceedings, though judicial in form, are in reality no different from the settlement of such cases by arbitration, the usual procedure in cases between private corporations or individuals

In appeals to this court from the award of an arbitrator and recently in the appeal from the Exchequer Court of the *Capital Brewing Company* and *The King,* I have expressed the view that where the question of value has been fully discussed and no mistake of law or fact is alleged, the mere suggestion that the amount of compensation is excessive or

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inadequate ought rarely to be considered a sufficient ground of objection to the award.

The case I have just mentioned was an appeal by the owner of the land taken, and I think the remarks which I then made apply with even more force in the case of an appeal by the Crown, the Exchequer Court being its own tribunal, the decision of which other parties may not always be so content to accept as they would that of arbitrators of their own choice or at all events independent of the parties and matters in dispute.

In the appeal, this year, by special leave, to the Privy Council, of *Buddy* v. *Toronto Eastern Ry. Co.*[2], in which an award of arbitration under the "Railway Act" was called in question,

[2] 38 Ont. L.R. 556

their Lordships, after stating that in their opinion such an award was in a position similar to that of the judgment of a trial judge, continue:

> From such a judgment an appeal is always open both upon fact and law. But upon questions of fact an appeal court will not interfere with the decision of the judge who has seen the witnesses and has been able, with the impression thus formed, fresh in his mind, to decide between their contending evidence—unless there is some good and special reason to throw doubt upon the soundness of his conclusions. * * * In the present case, as far as the question of fact is concerned, their Lordships see no reason whatever to justify interference with the award. The arbitrators appear to have scrutinized and examined the evidence on both sides with great care, and, in addition, they paid at least two visits to the property and made a careful inspection for themselves. It would be in a high degree unreasonable to interfere with such a finding of fact, based on such materials.

The principle so laid down, with which I am in entire accord, seems to have its application very fully in the present case. We cannot overlook the fact that the assistant judge of the Exchequer Court has a vast experience of this class of cases with which indeed

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a great part of his time is constantly occupied. An immense volume of evidence was taken, and no doubt carefully weighed by the learned judge who delivered an elaborate judgment. With all the advantage of a view of the premises, he has fixed on each lot separately the amount of compensation which he concludes is fair and reasonable. No doubt the amount is large, but I am unable to find any sufficient reason for disturbing an award so arrived at. That the value of property in the City of Quebec has risen enormously in recent years, there can be no doubt, and excluding the increase in the value of the respondents' property attributable to the particular public work for which the lands are expropriated, their property must have shared in the general increase. This must necessarily have been the case, if we consider how strictly limited is any space available for harbour accommodation within the port of Quebec.

I am myself intimately acquainted with the property expropriated and indeed with the whole locality, and to this extent, at any rate, I have the same advantage as the assistant judge derived from his view of the premises.

Whilst, as I have said, the amount awarded is large and perhaps more than I should have felt justified in giving, had I been in the place of the learned judge, I am still unable to concur in the judgment of the majority of the court.

IDINGTON J.—The Exchequer Court has awarded, in expropriation proceedings taken by appellant, for the parts of ten parcels of land so taken and damage to the remainder, the sum of $133,796.03, of which $133,196.03 is directed to be paid the Hearn estate, represented by three of the respondents.

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From this judgment appeal is taken herein, and the contention of appellant is that the learned trial judge had not adhered to the cardinal rule to be observed in such cases, of only allowing the market value, unless in such, cases (of which this is not one), as where the taking has incidentally, in doing so, damaged the owner's business or other material interests.

The case is a remarkable one and by no means easy of solution. The difficulties are created chiefly by the obvious failure of the witnesses for the respondents, representing the Hearn estate, including one of themselves, giving valuations that were not based on a strict adherence to the rule to which I have referred. Indeed I doubt if any one of these witnesses correctly apprehended what he was called upon to testify as to

In perusing their evidence, I do not find a single one of them pledging his oath to his belief that a sale could have been made, wholly uninfluenced by the advantages to be derived from the construction of the works in question and before the expropriation, of any of these properties, for the prices at which each of the respective witnesses says he values it or them

The learned trial judge has referred to them in comprehensive terms as follows:—

> The Crown has expropriated from these properties the right of way for the National Transcontinental Railway, coming into the city on the water front as far as the old Champlain market, and took all the land, belonging to the defendants, on the river side from the north line of the right of way, thus leaving the defendants with a certain piece of land on the northern side of the right of way to Champlain street. The part or piece of land so left to the defendants is, with the exception which will be hereafter mentioned, covered with dwelling houses with a small yard at the back. These buildings are being used for residential purposes and are subdivided into small lodgings to the one house and are occupied by tenants of the labouring class, yielding very small net revenues. The back part of their property, that is the part on the water front, is in some cases partly covered by old wharves running out at various distances. These wharves were built many years ago for a trade which no longer exists and for a number of years

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> back have practically remained unused and indeed shew the result of wear and tear occasioned by time and age.
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> While indeed, these properties at some time back, when the timber business and shipbuilding were at their best in Quebec and when large rafts of timber towed down the river St. Lawrence to Quebec and placed in the several coves adjoining the city, and while the water fronts of some of these properties were then used for retaining the logs and timber by booms stretched in front of them, these properties then commanded quite a value; on the other hand, this trade has now almost completely vanished and dissappeared from Quebec since a number of years, with the result that his water front property has gone down to a very little value on the market at the present time and at the date of the expropriation. In fact, it is a question as to whether there would now be a market for such property at Quebec, but for the public works now going on.

In connection with what I have just now said relative to market value, I would call particular attention to the last sentence of that just quoted. That and the rest of the quotation expresses with fairness the impressions I have received from an examination of the case and due consideration of the arguments advanced, as well as those derived from a perusal of the evidence of those witnesses I have referred to.

I agree with the observations of Rowlatt J. quoted by the learned trial judge herein, from his judgment in the case of *Sidney* v. *North Eastern Railway Co.*[3], at page 637, and other authorities he cites, bearing upon the exclusion from consideration of the market value, the advantages to be derived from the construction of the work in question for the promotion of which expropriation is made. Yet I cannot help thinking that the respondent, Hearn, and his witnesses failed to observe any such distinction in giving their evidence. Hearn himself says in speaking of two of these parcels, as follows:—

> Q.—In connection with the land lots Nos. 2402 and 2410, are there any special circumstances which make them more valuable in

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> your opinion? A.—Well, I would think the very fact of their being very close to this railway terminal, that has been decided upon, should give them value.
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> Q.—Could you give us an idea of what you mean by saying it was worth more 5% or 10%? A.—Probably more. I am dealing entirely with my own property. I know just what I would have accepted for it in 1900 and what I would want for it in 1913, had it been let to me as it was.
>
> Q.—That is the basis of your valuation? A.—Yes.

[3] (1914) 3 K.B. 629.

Q.—May I say it was made in the same way as you said your estimate of No. 2376 was made, viz., the price you would have been willing to take in 1913? A.—Exactly.

Q.—I think I asked you this question before. In the different estimates in which you have put the prices of these different lots, I think you said that the figures you had placed were the figures at which you were willing to sell; that is the basis on which you arrived at these figures? A.—Yes, the prices I felt they were worth. I was not prepared to accept less than what I thought the properties were worth.

Then one of the witnesses, Nesbitt, says:—

Q.—How did you arrive at the valuation of the lots? A.—From my general experience of values round the city, within the city and outskirts.

Q.—In the city and outskirts generally? A.—Yes, generally.

Q.—Any special reference to Champlain street? A.—No, I can't say any special reference to that part particularly.

And Conway says:—

Q.—In view of the rentals and other revenues of these different properties and the amount of business that has been carried on upon the different properties for the past twenty or forty years, do you still consider those prices reasonable? A.—I do not consider the rentals on the revenue at all.

Q.—What do you consider the proper revenue of, say, the wharves on 2376? A.—I don't know, I did not consider that.

Q.—I want to know what the revenue would be. I want to know where the value lies. How could you make money out of it? A.— I would consider it a good property to hold and sell to men who would come there for shipping purposes and build a wharf and including that part in it.

Q.—The prospective value of the property is what gives it the value that you name. Is that right? A.—That is right.

Mr. Taschereau's views were also evidently unduly impressed with the possibility of future development in the city.

Whether for the reasons I suggest or other good

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reasons, the valuations of these witnesses has not been accepted by the learned trial judge in arriving at his award.

There was evidence adduced on behalf of the appellant which was ostensibly based on transactions relative to similar properties next or near to those here in question.

The learned trial judge has not accepted that either, but seems, though he does not say so, to have reached his conclusions by a compromise between these two sets of evidence.

It is to be observed that the respondent's witnesses, referred to, also relied upon some transactions relative to properties of which the nearest was half a mile distant from the properties in question, except where Mr. Taschereau refers to those of one Evoy and another Picard deal, to be referred to presently.

The latter, as explained in appellant's factum, is hardly worth mentioning. The other is claimed to have been no real transaction, but the evidence on which that contention is set up is not cited, and if it exists, has escaped me.

The respondents make no argument based or bearing upon them.

On the other hand, there are a number of transactions relied upon by appellant relative to properties in the immediate neighbourhood of those in question based upon prices, which if to be accepted as evidence of market value of property, seem strongly to maintain the contention of the appellant.

Some of these are the result of decisions of the Exchequer Court relative to expropriations for the same purpose as now in question.

These should have considerable weight in the

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same court. Obviously, however, the parties concerned as owners may not have taken the same care in presenting their case as the present respondents or they may have given a grudging assent through failing to appeal.

For these and the like reasons they cannot carry the same weight as bargains made between parties relative to properties next to or in the immediate neighbourhood of those in question.

For that reason I look on the latter as a safer guide. And, as I have said in other cases heretofore, such bargains should, when there is no reason shewn to impeach their value

as such, be taken as a safe guide touching the question of market value. There are at least three instances herein presented by the appellant of such bargains bearing upon the issue presented.

I refer to that called "The Molson Macpherson sale," that known as "The Allen sale," and that belonging to the Belanger estate.

The first and lastly named seem directly in point though some objections are taken as to the Allen sale, which renders it of less value, yet of very great value, if correctly understood. A number of other properties referred to are not quite as clearly in point and would require an inspection and study of their relative situation to render sales thereof as valuable in evidence as those I specially refer to.

Indeed two of the experts produced to testify for the appellant tell that it was their duty, according to instructions, to try and reach a proper estimate and to be liberal in doing so, as it always is the interest of the Crown not to deal harshly nor to antagonize, needlessly, proprietors who may not desire to sell, and may be likely to resent injustice or even the appearance thereof, and force undesirable litigation.

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They tell that they used the many instances they give, as well as results of other inquiries, as the basis of their investigation.

Men so instructed and so acting frequently give evidence of greater value than experts retained, as it were, to promote the views of him retaining them, when often they may be unconsciously influenced by the interested suggestions of him whose cause they represent.

For these several reasons I think their estimates are more reliable than those presented by respondents' witnesses.

Again I observe that the latter seem herein prone to cite sales of property a long way from the property in question.

No doubt such illustrations as shew a rapid rise in properties elsewhere in same city are of value for that purpose, but not beyond the surmise that in time all may be more or less appreciated thereby. Any one of experience knows that properties may only be a very

short distance from some others in the same city, yet by reason of many circumstances, sometimes puzzling to understand, be much inferior in value and much less responsive to any general rise in values in the city.

Hence the nearer any property sold is to that expropriated renders a sale of same of greater value than any sales beyond the district where the expropriated land is situated.

For these various reasons I attach great importance to the sales, already referred to, in the district in question, few though they be, and am inclined favourably towards the evidence of those Crown experts who approached the valuation in question herein from that point of view I have referred to.

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Again the prospective rise in value is of no weight unless the market value of that possibility is directly borne in mind and testified to.

There are a number of other considerations I am about to present which tell very strongly against the respondent's claims as being of a most exaggerated character. I observe how far they exceed any estimate made by their witnesses.

These properties had been acquired by the late Mr. Hearn who died in 1894, and had then, I think, become worth a great deal less than when first acquired, or at all events less productive of revenue.

The respondent, Hearn, who seems to have had them in charge, gives an account of the revenue for five years preceding the year 1913, which shews a total of less than a thousand dollars per annum, after deducting taxes and insurance. He does not seem to have kept any accurate account of repairs which no doubt would still further reduce the net revenue given.

He intimates the results would be pretty much the same for the time back to his father's death.

Is there any conceivable reason why properties worth what he says, or any of his witnesses says, should be held for such a long period of time producing no more than he testifies to?

I have not heard of any prohibition against their being sold. The only reason that has occurred to me is that they were quite unsaleable at any such price as these gentlemen estimate them to be worth, or anything more than the Crown's witnesses have estimated them at.

Is it conceivable that any business man who could undoubtedly reap 6% per annum on a capital investment of say fifty or sixty thousand dollars, would hang on for twenty years to a property he could sell

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for that and reap such an income, yet would not sell it, if he could, even if in that time, it increased in value 25%? In other words, why did he, with such gloomy prospects as that decayed part of Quebec presented, accept less than a thousand dollars a year, with all the worries of weary waiting for something to turn up, face his steadily losing say two thousand dollars a year? At the best, admitting a rise of 25% in nearly twenty years, he would be winning in that time twelve to fifteen thousand dollars, and losing the compound interest on the surplus from a new investment.

I can find no answer except that it was quite impossible to realize even fifty thousand dollars on these properties.

And when we come to contemplate a possible one hundred and twenty to one hundred and thirty thousand dollars the proposition to hang on seems still more absurd, unless on the hypothesis that, as they could not be sold at all, the [owners might amuse themselves by imagining such values.

I do not suggest that a non-productive property is valueless. All that I submit is there must exist some reasonable probability of its use to give it a value.

Then let us turn to the assessed values. We find them running from $14,250 in 1903, on a rental basis to $38,700 in 1913, when a new basis of actual values seems to have been adopted for assessment purposes. The latter system admittedly increased the assessment values, as it generally does.

The assessment, I admit, varies so much as not to be a very reliable guide to exact actual values, but what a difference between $38,700 and $133,169! Can it be possible that the assessment was so far below what it ought to have been?

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But when we come to contemplate the sworn return of values for purposes of succession tax duties we find these properties, in 1894, valued at $7,250 and that accepted by the provincial authorities on the spot as right, or near enough to make it not worth contesting.

Assuming they were undervalued, how came it that the provincial authorities, sitting in Quebec, did not find anything worth quarrelling about? A slight difference of say even double or treble, might not matter for all the province could reap. But is it at all conceivable that any one then imagined they were, then, in 1894, worth forty thousand dollars or thereabouts? It would require that to bring them, allowing for rise since in value, up to what the agents of appellant placed them at in 1913.

And when we come to think of $133,169 it seems something unthinkable.

True such estimates do not bind those entitled to claim the true value for another purpose, but they do bind the conscience of the respondent Hearn and lead us to weigh his evidence accordingly.

I cannot, in view of all these considerations, see how we should allow more than the estimate made by the appellant's witnesses, save to add thereto the usual 10% for expropriation.

But then there are the questions of title which may make some slight variation in the result.

It will depend on the opinion of the other members of this court, as to valuations, whether it is necessary or worth my while entering upon that phase of the matter.

If their estimate exceeds mine to any very substantial extent that may cover the utmost possible margin of difference arising from the view to be taken

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by appellant's witnesses of the titles and consequent area to be considered. But I, by no means, admit that extra area, liable to be covered by water, equal to that not so when we find no present use for watered lots.

The appeal should, in any event, be allowed with costs.

DUFF J.—The award should be reduced to $81,767.50.

ANGLIN J.—I agree with the learned assistant judge of the Exchequer Court that, having regard to the statutory right of the Hearn Estate to maintain and use the wharves owned by it, it was unnecessary to determine the question of title raised as to the lands below low water mark on which portions of those wharves are erected. The estate had practically all the benefit and advantage of full proprietorship and was entitled to compensation on that basis. I therefore accept the areas adopted by the learned judge as the proper basis on which to compute compensation.

The general views expressed by the learned judge as to the principle on which compensation should be awarded and the elements that should enter into the computation are not open to criticism. But, making due allowance for the advantage which he had in viewing the property, I am, nevertheless, with great respect, of the opinion that the amounts allowed for compensation are so clearly and so grossly excessive that it is apparent that he failed to make a correct application of the principles which he had correctly stated in the abstract.

Without laying too much stress on this feature of the case it is, to say the least, astounding—

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and something which certainly called for a better explanation than was given of it—that, although, according to the testimony of John G. Hearn, the increase in value in the interval had probably not exceeded 25%, the executors of the Hearn Estate for purposes of succession duties in 1894 valued on oath at $7,250 the entire property for the taking of a portion of which the estate in this proceeding has demanded as compensation $281,181.18 and has been actually awarded, as of the 8th November 1913, $133,796.03. The municipal valuation for assessment purposes of the whole property, of which part was taken, was in 1903, $4,250, in 1908, $21,500 and in 1913, $38,700.

After giving to the whole evidence the best consideration of which I am capable, the valuations of the Crown witnesses on the basis of area on which they were made commend themselves to my judgment as sound and reasonable, erring, if at all, in favour of the respondents. I see nothing to be gained by discussing the evidence in detail or setting out the analysis of it on which this conclusion is based. Applying the figures of the Crown witnesses to the greater areas for which I think compensation should be made, I

would modify the judgment in appeal by reducing the sum of $133,796.03, the amount awarded in the Exchequer Court, to $81,767.50, including 10% for compulsory taking.

It seems to me to be unnecessary, as the learned trial judge has found, to determine in this proceeding any rights *inter se* of the Crown and the Quebec Harbour Commissioners in regard to beach and deep water lots.

The appellant is entitled to the costs of the appeal to this court.

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BRODEUR J.—Il s'agit d'un appel de la Cour d'Echiquier concernant l'expropriation de terrains pour le Transcontinental National dans le hâvre de Québec. La Cour a accordé aux intimés une somme de $133,196.03.

Les trois points qui se présentent dans la cause ont trait

1o. au droit de propriété des intimés.

2o. à l'étendue des terrains qui leur appartiennent.

3o. à leur valeur.

Droit de propriété.

Le nombre de lots expropriés est de dix; mais il n'y a divergence d'opinion quant au droit de propriété que pour trois, savoir les lots 2376, 2404 et 2410.

Tous ces lots sont situés sur le côté sud de la rue Champlain et se prolongent dans le fleuve St. Laurent. Des quais y ont été construits depuis un temps immémorial, probablement dans la première partie du siècle dernier. La Couronne était alors propriétaire de ces lots de grève et ces quais ont dû être faits avec son autorisation, sinon formelle, dumoins tacite. Aussi quand la Commission du Hâvre de Québec a été créée en 1859 (22 V. ch. 32), il a été décrété que la Commission devenait propriétaire en fidéicommis du lit de la rivière à partir des hautes eaux et qu'elle devenait la créancière des rentes constituées qui avaient été stipulées lors de l'octroi des lots de grève. Mais la loi ajoutait que les personnes qui avaient construit des quais ou d'autres travaux dans les limites du havre continueraient à en être les propriétaires.

En 1871, le cadastre d'enrégistrement a été fait sous l'autorité du Code Civil et l'un des terrains dont les intimés sont maintenant en possession a été désigné par le lot No. 2376. Le plan décrit ce lot comme comprenant non seulement la terre ferme, mais aussi

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une partie du havre couverte par les eaux à haute et basse marées. Le livre de renvoi lui donne une superficie de 34,440 pieds. mesure anglaise.

Plus tard, en 1882, ce No. 2376 a été vendu par le shérif et acheté par l'Honorable John Hearn, dont les intimés sont les exécuteurs testamentaires. La description du lot dans l'acte de vente du shérif est comme suit:

> Bounded on the N.W. by Champlain street and by No. 2377; to the S.E. by low watermark of the river St. Lawrence by No. 2377a, to the S.W. by No. 2380 and to the N.E. by No. 2371, containing 34,440 in superficies together with the buildings, wharf, etc., circumstances and dependencies.

Cette description est évidemment erronée. Ce lot ne peut pas avoir 34,440 pieds, s'il ne comprend que le terrain couvert par les hautes eaux; et d'ailleurs une partie du quai qui en dépendait se trouvait à eau profonde. La description n'était pas conforme d'ailleurs à celle du livre de renvoi.

En vertu de l'article 2168 du Code Civil, il est statué que le numéro donné à un lot sur le plan et le livre de renvoi est la vraie description de ce lot et suffit dans tout document quelconque et notamment dans la vente faite par le shérif. Il n'est pas nécessaire d'indiquer ses tenants et aboutissants, excepté dans le cas où il s'agit d'une portion d'un immeuble. Dans le cas actuel, le shérif, en indiquant que ce lot était borné par les limites de la basse marée, a donné un aboutissant qui n'était pas exact et cela n'a aucun effet légal; *Caron* v. *Houle*[4]; car le plan couvrait incontestablement un morceau de terrain au delà des eaux basses.

Le lot cadastré a été évidemment fait pour couvrir tout le quai, non-seulement la partie à découvert dans les eaux basses, mais aussi celle qui s'étendait au delà.

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L'appelant allègue que le droit de propriété des intimés est borné par la ligne des eaux basses; et, en outre du contrat du shérif, il invoque un acte fait par la Commission du

[4] Q.R. 2 S.C. 186.

Havre aux auteurs de l'Honorable Mr. Hearn en 1861 par lequel la Commission du Hâvre a vendu une partie de ce terrain.

Il est loin d'être certain que cet acte de vente fut nécessaire; car il est évident, par le récit des faits qu'il contient, que ce terrain était occupé par les acheteurs ou leurs auteurs en 1859, lors de la création de la Commission du Hâvre, et par le statut, comme nous l'avons vu, il était décrété que les possesseurs continueraient à jouir et à se servir de leurs quais comme par le passé. Ces possesseurs cependant voulaient je suppose s'assurer à tout jamais de la validité de leur titre et c'est, ce qui les a incités à se faire donner un nouveau titre par la Commission du Havre.

Je suis d'opinion, avec le cour Inférieure, que la succession Hearn est propriétaire du lot No. 2376 jusqu'à l'extrême limite du quai qui y est construit et ce, en vertu du statut créant la Commission du Hâvre. Elle a eu d'ailleurs possession paisible et indiscutable de cette partie du lot 2376, tant par elle que par ses auteurs, depuis plus de trente ans (art 2242 C.C.).

La cour Inférieure a fait mesurer la partie ainsi occupée par les intimés et a trouvé une superficie de 25,280 pieds.

J'en suis venu à la même conclusion que la Cour inférieure pour les autres lots au sujet desquels le droit de propriété est contesté.

Etendue du terrain.

La cour inférieure a accordé aux intimés une indemnité pour cette partie appelée *Gore.* Cela représente une superficie de 888 pieds. C'est une

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toute petite lisière de terrain dont il a été question dans certains actes. Il me paraît cependant que le mesurage des lots tel que fait sous l'autorité du cadastre et par l'arpenteur Tremblay ne saurait justifier les intimés de réclamer une indemnité pour ces 888 pieds.

Valeur.

Les propriétés expropriées, comme je l'ai déjà dit, sont situées en front sur la rue Champlain, à Québec, et s'étendent vers et dans le fleuve St. Laurent, dans le hâvre de Québec.

Des maisons sont construites à la rue Champlain et sur l'arrière des lots, on a érigé des quais dont on se servait autrefois pour le commerce si considérable de bois qui se faisait dans le cours du siècle dernier. La construction du chemin de fer le Transcontinental' ne touchait pas aux maisons bâties sur la rue Champlain, mais elle prenait une partie de ces quais; et afin d'éviter des réclamations en dommages assez difficiles à déterminer, la Couronne a jugé à propos d'exproprier tout le terrain couvert par les quais et même jusqu'à la ligne frontière de la Commission.

Le traffic pour lequel ces quais avait été originairement construits n'existe plus ou n'est fait que sur une bien petite échelle; et, en réalité, comme dit l'honorable juge de la cour inférieure:—

> These wharves * * * for a number of years back have practically remained unused and indeed shew the result of wear and tear occasioned by time and age * . * * with the result that this waterfront property has gone down to a very little value on the market at the present time and at the date of the expropriation. *In fact it is a question as to whether there would now be a market for such* property at Quebec, but for the public works now going on.

On voit d'ailleurs que la plupart de ces propriétés ont été vendues par le shérif et achetées à des prix extrêmement bas.

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Il est possible que ces lots pourraient avoir plus tard une très grande valeur si le gouvernement ou les autorités du port y faisaient des travaux tellement considérables qu'un particulier ne saurait et ne pourrait pas entreprendre. Ces possibilités peuvent être prises en considération quand on déterminera la valeur actuelle. C'est ce que le juge de la cour inférieure a fait.

L'indemnité qui doit être payée est la valeur que le terrain exproprié avait pour le propriétaire; et cette valeur consiste dans tous les avantages actuels et futurs que le terrain possédait; mais on ne doit considérer que la valeur actuelle de ces avantages. *Cedar Rapids* case[5].

[5] (1914) A.C. 569 p. 576.

Il y a une grande divergence d'opinion entre les témoins des propriétaires et ceux de la Couronne quant à la valeur des terrains: les premiers disent $281,181.18 et les seconds donnent une valeur de $38,700.

Les témoins du propriétaire procèdent suivant différents principes. M. Hearn, l'intimé, lui-même nous dit qu'il peut fixer un prix et y tenir, sans prendre en considération la valeur marchande du terrain dans les environs. Un autre témoin nous déclare que son évaluation est basée sur le mouvement de la propriété dans la ville de Québec et de ses environs, mais qu'il n'a pas pris en considération les conditions actuelles des terrains expropriés et de leur participation dans ce mouvement général. Un dernier témoin base son évaluation sur le prix qu'une compagnie de bateaux pourrait plus tard offrir, quand le commerce se développera et pourra utiliser ces quais.

Les témoins de la Couronne étaient des experts employés dans le but de faire l'évaluation de toutes

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les propriétés à être expropriées pour le Transcontinental dans cette localité, depuis le Pointe de Sillery a aller jusqu'au marché Champlain. Les propriétés en question dans cette cause étaient parmi celles-là. Ils se sont mis au courant des ventes de terrain qui avaient été faites dans ces derniers temps et ont pris en considération toutes les autres circonstances de nature à influer sur cette valeur. Ils ont également considéré les revenus que donnaient ces propriétés et leur évaluation municipale.

La preuve nous démontre que les revenus bruts étaient annuellement d'environ $1,500 et que les revenus nets étaient de $500 de moins, soit $1,000 environ.

Alors les évaluateurs de la Couronne, en accordant $38,700 d'indemnité, donnaient au propriétaire un capital qui produirait le double de ce qu'il retirait de ses propriétés.

Il est à remarquer également qu'en 1894, au décès de l'Honorable M. Hearn, l'auteur des propriétaires actuels, les propriétés ont été évaluées par l'intimé M. J. G. Hearn lui-même, l'un des héritiers et des exécuteurs, et il a alors payé des droits sur une valeur qu'il a fixée à $7,250.00.

C'était bien loin de la somme de $280,000 qu'il réclame aujourd'hui.

Il est intéressant de lire la partie du témoignage de M. Hearn qui nous parle de la valeur proportionnelle des terrains en 1890 et en 1913c Il en est arrivé à la conclusion que les terrains pendant cette période ont peut-être augmenté d'une valeur de 10%. Alors comment peut-il expliquer qu'en 1890, il jurait dans sa déclaration au Trésorier Provincial que ces terrains valaient $7,250 et qu'aujourd'hui ils valent $280,000?

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Comment concilier ses déclarations? Voici d'ailleurs son témoignage sur ce point:—

> Q.—You spoke to us about the value of this property, I suppose the values you were talking about were the values in 1913? A.—About that, yes.
>
> Q.—How would those valuations compare with say five years before? Was there any increase or decrease at all? I am not speaking about small differences. A.—The value might have increased a little, that is five years ago or thereabout.
>
> Q.—Five years before 1913. Are you talking about? A.—Five years before 1913, I might possibly have sold the property for less than I would since 1913 in certain conditions.
>
> Q.—Are the circumstances such, since 1913 and the time you now give evidence, as to make it proper or incumbent on you to ask a higher price to-day than you would have asked in 1913? A.—No.
>
> Q.—Would you say there is any great difference in the value of property between the year 1913 and the year 1900? A.—I think in 1913, this property we are speaking of would be of more value than in 1900 had the railway not come in and destroyed it, had the railway remained at Cape Diamond.
>
> Q.—Leaving aside for the moment any effect the railway might have had would the property have been worth approximately the same in 1900 as it would in 1913? A.—Eliminating any influence the railway might have had?
>
> Q.—Yes. A.—I think it would be worth more in 1913 because of the general improvement of property in Quebec.
>
> Q.—Could you give us an idea of what you mean by saying it was worth more? 5% or 10%? A.—Probably more. I am dealing entirely with my own property. I know just what I would have accepted in 1900 and what I would want for it in 1913, had it been left to me as it was.
>
> Q.—May I say, it was made in the same way as you said your estimate of No. 2376 was made, viz., the price that you would have been willing to take in 1913? A.—Exactly.
>
> Q.—Would you compare the price in a general way, that you would have been willing to take in 1913 with the price you would have taken in 1900? A.—I would want more than I would want in 1900.

Q.—Approximately what proportion or percentage? A.—Probably 25% or something of that kind.

Q.—Could you go as far back, from recollection, and compare in a general way, the value of the property in 1913 with the value in 1890? A.—No.

Q.—Can you say in a general way, whether the value of this property increased between 1890 and 1900? A.—I think it would increase.

Q.—To any considerable extent? A.—Yes, I would think the property in Quebec during the last ten years increased generally.

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Q.—I am not talking of the last ten years. I am taking from 1890 to 1900. A.—I cannot tell you that.

Q.—Can you say, in a general way, whether those properties increased or not from 1890 to 1900? A.—Perhaps not.

Quant aux ventes de terrain dans les environs, il est en preuve que le lot No. 2411, qui est voisin de Tun des lots expropriés, a été vendu en 1901, avec les quais qui y avaient été construits, à raison de 16 cents. du pied carré, et un autre terrain, aussi contigu, portant le No. 2415, a été vendu aussi en 1901 pour 22½ cents. Cette différence dans le prix entre ces deux ventes était probablement due au fait que les quais étaient plus spacieux dans le premier que dans le dernier cas.

Mais vers le même temps où l'expropriation a eu lieu, des terrains semblables ont été vendus à la Couronne pour la construction du chemin de fer par les héritiers Molson, par Madame Bélanger et par la Compagnie Allan. Les héritiers Molson ont vendu 65 cents. du pied, Madame Bélanger 85 cents et la Compagnie Allan 94 cents.

Ces terrains étaient voisins des terrains de la succession Hearn et le prix qui a été payé peut nous donner une idée assez exacte de la valeur marchande des propriétés expropriées. Je vois que les terrains ainsi vendus à la Couronne ont été vendus à des prix différents, selon qu'ils étaient plus ou moins rapprochés du centre de la ville. Ainsi la propriété Allan, qui est la plus près, a été vendue à 94 cents, la voisine vers l'ouest, celle de Madame Bélanger, à 85 cents, et enfin celle de la succession Molson, qui est la plus éloignée à 65 cents. Or, cette dernière est justement voisine de la propriété de la succession Hearn, la plus proche de la ville. Elle porte les numéros du cadastre 2370 & 2371 et la propriété voisine à l'ouest, qui appartient à la succession Hearn, porte le numéro

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2376. La propriété Molson, qui, comme la propriété Hearn, est un lot de grève, est donc mieux située que cette dernière. Elle a été vendue cependant au prix de 65 cents le pied, tandis que la cour inférieure a accordé à la succession Hearn une indemnité sur le pied de $1.88 le pied. Il n'y a rien dans la cause qui puisse justifier une si grande différence.

Les autres propriétés de la succession Hearn sont toutes situées plus à l'ouest, c'est-à-dire de plus en plus éloignées du centre de la ville.

La cour inférieure a accordé pour le No. 2381 une indemnité équivalente à $1.35 du pied,

pour le No. 2385..... 1.57 du pied,

pour les Nos. 2393, 2394..... 1.17 du pied,

et pour les Nos. 2402, 2403, 2404, 2409 & 2410, $1.64 du pied.

Ce dernier lot (No. 2410) est voisin d'une propriété semblable qui a été expropriée et pour laquelle il a été accordé 52 cents du pied.

Je crois que, dans les circonstances, une indemnité raisonnable, même libérale, serait accordée à la succession Hearn, si je fixais un prix uniforme pour tous ces lots et si j'adoptais pour cette fin la valeur payée à la succession Molson, soit 65 cents du pied. D'après les calculs que j'ai faits, la superficie du terrain exproprié se chiffrerait comme suit:—

Lot No. 2376.....	25,280
Lot No. 2381.....	5,880
Lot No. 2385.....	2,529
Lots Nos. 2393 & 2394.....	8,552
Lots Nos. 2402, 2403, 2404, 2409 and 2410.....	31,633
formant un total de.....	73,874

à 65 cents. du pied, cela donnerait $48,018.10.

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Il faudrait ajouter à cela la valeur des quais. Il est en preuve qu'il y a 15,833 verges cubes de quaiage et que, pour l'une des propriétés voisines, il a été considéré qu'une somme de $1.50 la verge était raisonnable. La Couronne, dans son factum, reconnaît que la somme de $1.35 la verge serait une valeur raisonnable. Je suis prêt à accorder la somme de $1.50. Alors cela ferait une somme additionnelle de $23,749.50. Il conviendrait d'ajouter à cela la dépréciation que la partie des lots restant à l'exproprié va subir à cause de l'expropriation. Cette dépréciation parait avoir été évaluée par la cour inférieure à la somme de $10,000.00. En ajoutant ces trois sommes de $48,018.10, de $23,749.50, et de $10,000.00 nous arrivons à un total de $81,767.60, qui serait certainement une indemnité juste et raisonnable.

L'appel devrait être maintenu avec dépens de cette cour et l'indemnité devrait être réduite à $81,767.60.

Les frais de la cour inférieure seront à la charge de la Couronne.

Appeal allowed with costs.

Solicitors for the appellant : Gibson & Dobell

Solicitors for the respondents: Pentland, Stuart, Gravel & Thompson.