

THE KING ON THE INFORMATION OF THE } PLAINTIFF;
 ATTORNEY-GENERAL OF CANADA. }

1909
 May 21.

AND

MARGARET HAYES, FINBAR }
 HAYES AND FRANCIS Mc- } DEFENDANTS.
 DOUGAL }

Expropriation—House in good repair—Special adaptability for apartment purposes—Compensation.

Certain premises situated on a city street were expropriated by the Crown for the erection thereon of public buildings. The house although not a new one was well and solidly built, and the owner claimed that it possessed special adaptability for the purpose of being used as apartments or flats.

Held, that the compensation for the property was to be assessed in respect of its market value, and that upon the facts the alleged special adaptability was not an element of such value. *Lucas and Chesterfield Gas and Water Board* ([1909], 1 K. B. 16) referred to.

THIS was a case of expropriation of certain property within the City of Ottawa for the purpose of erecting a public building thereon.

The facts are stated in the reasons for judgment.

April 26th and 27th, 1909.

The case now came on for hearing.

A. W. Fraser, K.C., and *D. H. McLean* for the plaintiff;

G. F. Henderson, K.C., and *E. J. Daly* for the defendants Hayes.

D. J. McDougal for the defendant McDougal.

Mr. *Henderson* contended that the property was especially adapted for the purposes of apartments or flats. It was in a locality convenient to the public buildings and business houses, and within a few minutes walk of the river bank with its fine scenery and boating facilities.

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Mr. *Fraser* relied on *Lucas and Chesterfield Gas and Water Board* (1), as establishing that there was no element of special adaptability in the compensation to be assessed in this case.

CASSELS, J., now (May 21st 1909), delivered judgment.

The information is filed to have the value ascertained of property owned by the defendant Margaret Hayes expropriated by the Crown.

The property in question is situate on Sussex Street, about 330 feet north of St. Patrick Street and about 1886 feet north of Rideau Street. Unlike the Condon and Murphy properties, the values of which I have dealt with (2), the property in question is valued by the defendant as residential property distinguished from mercantile property.

The property in question has a frontage on Sussex Street of 132 feet with a depth of 155.76 feet. There is no street in the rear.

The Crown tendered the sum of \$17,500. The defendant claims the sum of \$40,000.

The valuation has to be ascertained as of the 24th January, 1908.

In this case a considerable portion of the evidence taken in the case of *The King v. Condon* (3) as to the growth of the city of Ottawa, the various improvements such as parks, Interprovincial bridge, etc., all tending to the appreciation of values, has been accepted.

There is no doubt that the value of property has increased largely during the last ten years in some localities to a greater extent than in other localities.

On the premises in question is erected a valuable house, solidly and well built, erected a good many years ago by Hamilton Brothers. The main part of the house has a

(1) (1910,) 1 K. B., 16

p. 275; and *The King v. Murphy*, post,

(2) See *The King v. Condon*, ante p. 401.

(3) Ante p. 275.

frontage of 45 feet on Sussex Street by a depth of 75 feet. There are stables in the rear not at present in good repair.

The defendant bases her claim for a large amount of compensation on the special "adaptability" of this property for apartments, or flats.

A large amount of evidence has been given as to the cost of reconstructing the present buildings for apartment purposes, the probable return, and the investment etc. I will deal with this aspect of the case later.

A considerable portion of the evidence is as to what the buildings originally cost and what the value would be at the present time if a building of a similar character were erected. These witnesses ignore the market value at the time of expropriation.

For the defendant witness Cole places	
the value of the buildings at.....	\$ 20,000 00
And the value of the land at \$121.00	
a foot frontage.....	16,000 00
	<hr/>
	\$ 36,000 00
Witness McDermott values the land	
at.....	\$ 16,000 00
And the buildings at.....	20,000 00
	<hr/>
	\$ 36,000 00
Witness Noffke values the buildings	
at.....	\$ 25,407 00
Witness Askwith values the build-	
ings at.....	24,769 00
Witness Stewart for the Crown	
places the selling value at... ..	17,000 00
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He values the land at.....	\$ 5,000 00
And the buildings at.. ..	12,000 00
	<hr/>
	\$ 17,000 00

His valuation of \$17,000. is based on the selling value.

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Witness Stuart values the building,
 as it is, to build at.....\$ 15,217 00
 His view is that it cost approximately \$19,113 ; but
 would require a considerable expenditure to make it a
 first class house.

Witness Link, an employee of the
 Hamilton Bros., states the cost
 from \$18,000 to.....\$ 22,000 00

Witness Lebel values the land at... 4,000 00
 And the buildings at..... 13,000 00
 \$ 17,000 00

I have but little doubt that the buildings would cost
 to build at the time of the expropriation about \$20,000.
 What I have to arrive at is the fair market value at the
 time of the expropriation, namely, 24th January, 1908.

Mrs Hayes purchased the property in question on the
 13th October, 1889 for the sum of \$8,000.00. She is
 receiving the sum of \$30 a month for a portion of the
 lower flat.

On the 28th February, 1905, she gave an option on the
 property to one Taggart, terminable on the 15th July,
 1905, for the sum of \$15,000. Cole, a witness for the
 defendant, states that the property was worth at the time
 of his giving evidence \$2,000 more than on the 24th
 January, 1908. He also states that during the last ten
 years property in that locality has increased about one
 hundred per cent.

Reference has been made once or twice to improvement
 by reason of the proposed expenditure of \$100,000 to be
 made by the Grand Trunk Pacific on Nepean Point. There
 is no legal evidence before me on this point.

Having regard to the price paid by Mrs. Hayes for the
 property, the option given on the 28th February, 1905,
 and the prices paid by the Crown for adjoining properties,
 all set out in the evidence of Riopelle, more particularly

the Oliver property, the Lemieux property etc., I am of opinion that if the defendant is allowed the sum of \$20,000 she will be fully recompensed for the market value, allowance for compulsory expropriation, contingencies, etc.

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As I have stated, the Crown witnesses Stewart and Lebel place the selling value at \$17,000 without making any allowances.

Mr. *Henderson* put forward a strong argument on the plea of special adaptability for an apartment house or flats.

According to Rogers, a witness for the defendant, the idea of apartment buildings was a sudden growth since 1st January, 1908.

Noffke, the architect, stated that he did not place much stress on the apartment house question; that it was sprung on him on the spur of the moment.

The suitability for apartments or flat purposes is something that would necessarily be taken into account in arriving at the market value. It is something that would add to the value in the market. There was and is any quantity of property in the neighborhood equally suitable. No apartment house has been erected in that locality.

In addition to the case of *The King v. Dodge* (1), referred to in the judgment in the case of *The King v. Condon*, I would quote from the language of Fletcher-Moulton, L. J., in the case of *Lucas and Chesterfield Gas and Water Board* (2). He states at page 29 as follows:—

“The principles upon which compensation is assessed when land is taken under compulsory powers are well settled. The owner receives for the lands he gives up their equivalent, i.e., that which they were worth to him in money. His property is therefore not diminished in

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

(2) (1909) 1 K. B., 16.

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amount, but to that extent it is compulsorily changed in form ”.

“ The question has arisen only in the cases where the special adaptability is for the purposes for which lands are required only when used for works of public utility, which are naturally different from the uses to which lands are put while in private hands, and which therefore do not necessarily influence the price which such lands command in the market ” (p. 30).

“ The land in question is by its position and conformation marked out as a favorable site for an impounding reservoir to collect water for the public supply of a district.” (p. 30).

In the case of *Countess Mary Ossalinsky and Mayor et al. of Manchester*, reported at length in *Browne & Allen’s Law of Compensation* (1), the principles of ascertaining values are fully discussed by Grove, J., at page 661.

Stephen, J., at page 669, refers to the particular land :

“ As to this particular piece of land, I will not say it is unique, but it is very nearly unique ; it is one of the small number of places which is capable of being made into a reservoir which would supply any towns with which they might be connected ”.

I allow the sum of \$20,000 and costs. Provision must be made for the payment of the mortgage. Interest will run from the 24th January, 1908 ; the rents due can be set off.

Judgment accordingly.

Solicitor for plaintiff : *D. H. McLean.*

Solicitor for defendants Hayes : *E. J. Daly.*

Solicitor for defendant McDougal : *D. J. McDougal.*

(1) [1903] 2nd ed. at page 659.