1915
Sept. 7.

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

PLAINTIFF;

AND

THE CARSLAKE HOTEL COMPANY, LIMITED, AND GEORGE T. O. CARSLAKE,

DEFENDANTS.

*Expropriation—"Quantity survey method" and intrinsic value—Compensation—Valuation—"Davies Rule"—Costs.*

An appraisal of a building by the "quantity survey method, while it may disclose the intrinsic value of the property, does not necessarily establish its market value.

2. Intrinsic value is the value which does not depend upon any exterior or surrounding circumstances.

3. The "Davies Rule" of valuation ought not be applied in its narrowest sense, which destroys its practical use. There are two essentials preliminary to applying the rule: 1st. The basic value of a standard lot in the locality must be established beyond peradventure; 2ndly The conditions of the lot must be normal.

4. Where no tender or offer is made by the party expropriating, the compensation may carry interest and costs.

THIS is an Information exhibited by the Attorney-General of Canada, for the expropriation of certain lands for a post office building in the City of Montreal, P.Q.

The facts are stated in the reasons for judgment.

April 27th, 28th, 29th, 30th, 1915.

The case now came on for hearing before the Honourable Mr. Justice Audette at Montreal.

*Peers Davidson*, K.C., and *L. H. Boyd*, K.C., for the plaintiff;

*H. A. Montgomery*, K.C., for the defendant.

AUDETTE, J. now (September 7th, 1915) delivered judgment.

This is an Information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that certain lands, belonging to the Defendant Company, were taken and expropriated, under the authority and provisions of *The Expropriation Act* (R.S.C. 1906, Ch. 143) for the purposes of a Post Office Building, in the City of Montreal, by depositing a plan and description of such property, on the 7th April, 1914, in the office of the Registrar of Deeds for Montreal West.

The defendant's title is admitted.

The Crown by the information tendered the sum of $325,532. However, at the opening of the trial, on the application of Counsel for the Attorney-General, the information was by leave amended by withdrawing this offer of $325,532. or any sum as compensation to the defendants, the Crown intimating its willingness to pay for the property in question such sum as the Court might determine to be sufficient and just. In the result the case is to be treated as if no offer or tender were made on behalf of the Crown, the whole matter being entirely left to the Court for determination.

The defendant, The Carslake Hotel Company, Limited, by its defence, claims it is alone entitled to recover the compensation for the lands taken—the other defendant, George T. O. Carslake, who—by a declaration filed of record submitted himself to justice—having assigned all his rights to the defendant company.

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The defendant Company by its defence further claims the sum of $712,330. as compensation for the property taken. However—in the course of the trial —it having been made clear that the $60,000. deed of December, 1910, covered part payment of the land and property in question, the defendant company withdrew, as part of their claim, the sum of $53,000. mentioned in their particulars filed on the 18th December, 1914. In this amount of $712,330.—as shown by the particulars—there is also a sum of $64,757. for a 10% allowance for forceable deprivation—and that 10% is taken on an amount including the $53,000. so withdrawn, as above mentioned. Therefore, the defendant Company's claim is as follows, viz.:

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| Lands taken, 20,394 sq. ft. at $25. per foot | $ 509,850.00 |
| Buildings, including fixtures | 84,723.00 |
| | $ 594,573.00 |
| Forceable deprivation | 59,457.30 |
| Their claim as amended then stands at the total sum of | $ 654 ,030.30 |

Now this property must be assessed, as of the date of the expropriation, at its market value in respect of the best uses to which it can be put, namely, as a hotel-site—taking into consideration any prospective capabilities that the property may have for utilization in a reasonably near future.

On behalf of the owners, witness Dorsey following the Davies rule, placed a value upon the property at $535,000.; witness Ogilvie at $536,215. for the lands and buildings; and witness Findlay, for the first time using the Davies rule, at $438,723 for the land only. On behalf of the Crown witness Brown placed a value

at $219,000.; witness Ross at $240,000.; witness Ferns considers the assessed value at $160,000. to be the actual value of the property as between any one desiring to buy and one desiring to sell, but not the speculative value; and witness McBride values the whole property at $284,000.

On behalf of the proprietors there is also this additional evidence in respect of the value of the surrounding small shops and shacks, returning comparatively very high rents. Together with the evidence of witness Maxwell, who proceeding to value the building, inclusive of permanent fixtures, at $84,000. upon the replacement or intrinsic value without allowing any depreciation. This witness obviously proceeded on a wrong principle or basis.

Indeed, this replacement value, without taking any depreciation into consideration, is an appraisal of the building under what is called the "quantity survey method," which, while undoubtedly it may disclose the intrinsic value of the property, does not necessarily establish its market value. The intrinsic value is the value which does not depend upon any exterior or surrounding circumstances. It is the value embodied in the thing itself; the value attaching to the objects or things independently of any connection with anything else. For instance, had we to fix a proper compensation upon a discarded shipyard, formerly used in the building of wooden ships, we would be facing launch-ways, logs and piers of perhaps great intrinsic value; but, if the property were thrown upon the market for sale it would have, indeed, very little commercial or market value. *The King v. Manuel* (1)

A great deal has been said with respect to the "Davies Rule" for valuing a piece of property—a rule which was explained by witness Davies himself, the

(1) 15 Ex. C.R. p. 381.

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person who formulated it. The rule is based on the true fact, I must admit, that every square foot of a lot has a different value. This rule may be followed with advantage for a normal lot—a lot of an ordinary shape. Two necessary elements, or two paramount essential requirements must first be established to work out the rule in a satisfactory manner. (1) The basis value of a standard lot in that locality must first be established beyond peradventure or uncertainty. (2) It must be applied to a lot, the conditions of which are normal. That is to a lot with a certain defined frontage, the depth of which to be ascertained with common sense and ordinary business acumen. The fallacy of applying the rule to the valuation of the present property is that in doing so one would overlook the shape or natural conformation of the lots. While the property has a frontage of 63.11 feet on St. James Street, and 65.06 feet on Windsor Street—the corner lot between St. James and Windsor intervening between them—one cannot overlook on glancing at the plan, that the small Windsor Street lots of 56.3 in depth, on the northwest, upon which small shops and buildings are erected, were not full lots. That is when these 56.3 feet lots were sold, part of them only were required and the back part—or the yards of these 56.03 feet lots were not purchased—as not required for the small purpose for which they were acquired and that, in the result, all that piece of property, to the back of these lots, cannot, consistent with common sense—be tacked on and added to the St. James Street lot. That would be working the "Davies Rule" in the narrowest sense of which it can admit and thereby destroy its practical use. The fallacy of adding these back premises of the small 56.03 lots on Windsor Street to the St. James Street lot has been made

possible to induce some of the witnesses to use the "Davies Rule," from the fact that the St. James Street lot is situate one lot removed from the corner, and that very fallacy has obviously made the Davies rule unreliable in a case like the preesnt one. The Davies rule, like every other rule, is subject to the ever necessary good judgment, common sense and business acumen of an honest valuator, reckoning also with exceptions. It is like an ordinary syllogism, your premises must be true and sound, before you can draw your conclusion, before your conclusion can follow.

Much has been said in comparing the respective value of St. George's Church property with the Carslake Hotel. The former has a frontage of 329 feet on Windsor Street, 310 feet on Stanley Street, and 182 feet on Osborn Street, and was recently sold at $20 a foot—$1,180,000.

This property faces Windsor Station on one street, is surrounded by three streets giving it light and air, and it is situate in a good locality which caters to surroundings of a higher class. Besides the locality, the conformation or shape of the lots must be taken into consideration before arriving at a conclusion on the relative value of the two properties. The Carslake property has no corner. It has a frontage of 63.11 feet on St. James Street, and a frontage of 65.06 feet on Windsor Street, with the back premises of the properties adjoining to the north—that is a large wedge running in along these back premises. There is no comparison between the two properties, there is no similarity in both locality and shape and the St. George's Church property is most decidedly of greater value and very much more advantageous to build upon. The balance of the commercial advantage of the respective properties is also in favour of the

St. George property. While the Carslake hotel is opposite the Bonaventure Station—the St. George is opposite the Windsor Station, without any street railway intervening between the station and the property, but with the advantage of the street railway on Windsor Street, and the neighbourhood of the Canadian Northern railway station within a very near future would also turn the scale in favour of the St. George property in that respect.

Without going into the details of the negotiations which preceded the sale of this property to witness Dorsey by defendant Carslake, it may be stated that in the result this property was, on the 1st December, 1910, sold for the sum of $150,000., this sum to cover the land, the buildings, the furniture, the good-will of the hotel business as a going concern, and the transfer of the license—subject to the proportional payment of its unexpired life. Of this amount of $150,000. the sum of $60,000. was paid in cash, but the purchaser had up to the 1st May, 1916, to pay the balance if he exercised his right to purchase under the deeds.

During the time this property was run as a hotel from the date of that sale, or from the beginning of 1911, to the delivery of possession under the expropriation proceedings, namely, during three years and ten months and a half, the returns of this property, valued in the light of great optimists, only apparently returned the net sum of $10,648.79. But this return is obtained without making any allowance for any interest on the sum of $60,000. part payment of the $150,000. under one of the deeds of the 1st December, 1910, fully explained in the evidence. In the result this hotel ever since its purchase by witness Dorsey was run at a loss. It would therefore not be quite fair to assess its value on a revenue basis.

Witness Dorsey states that the present building is too small for the size of the land and he caused to be prepared, for the purposes of this case, filed as Exhibits "O," plans of a large hotel which could be erected upon the whole area of the land taken, containing 400 or 480 rooms, at a cost of.................. $ 1,485,000.00 represented as follows:

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|---|---|
| Land.................................. | 535,000.00 |
| Building................................ | 800,000.00 |
| Furniture................................ | 150,000.00 |
| | $ 1,485,000.00 |

Whether any business-man would venture in such a scheme and risk the sum of $1,485,000. in such an enterprise, with a building lighted by the 9 feet wells in question, giving also very unsatisfactory air, taking in consideration the returns of the former Carslake hotel, is a question beyond the sane comprehension of the ordinary person gifted with common sense.

The best answer to such a scheme is perhaps found in the evidence of witness Painter, who was chief architect for the Canadian Pacific Railway during 6 years, who has had experience in remodelling and readjusting hotels for the latter company. Speaking of these plans, exhibits "O," he says that they are apparently a set of preliminary studies and he does not think the question has been gone into to the bottom, and he does not consider them as final designs. From an investment standpoint it is an impossibility to erect a hotel according to these plans. A hotel, ten stories high with only 8 to 10 feet of a well for light and air, is inadequate where the adjoining property is built up to the same height—adding you must have enough air and light to make the place "*livable.*" He would not advise a client to build on these lines—he would not

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advise building more than four or five stories high, and would try and persuade him to buy the corner lot and make a real building out of it. The most he would advise would be to put up a medium price hotel, not more than $300,000. on the whole venture, with not more than 200 rooms.

There is also the question of the options given from time to time by the witness Dorsey. On the 19th October, 1911, he gave an option to one Tabatchnick at $15. a square foot, which on 20,394 square feet represented $305,910, with the additional sum of $10,000. for the contents of the hotel. Then there is the option to witness Brown on the 30th January, 1912, for $315,000. inclusive of contents of hotel, extending to the 30th April, 1912, but kept alive, as shown by the June telegram from witness Dorsey, and to September, 1912, by the latter's letter, and according to witness Brown kept alive up to the time the negotiations were started with the Government, and under which only one offer was made of $10. a foot by one Mr. Vannier and refused by Mr. Dorsey. Then witness Brown adds that witness Dorsey was always open to an offer, indicating he was willing to take a price less than that mentioned in the option—this left the matter an open question, although the so-called option or agreement was for a definite period. It is well to bear in mind that these two so-called options are given to real estate agents who were to deduct their commission from the purchase price—a commission of 2½% in the case of witness Brown is specified in the agreement, and it must be inferred that the other agent was not selling without any commission.

There is a material conflict in the evidence respecting the appreciation of the market fluctuations from 1910 or 1911, up to the time of the expropriation. Some

witnesses contend that while property in certain parts of Montreal, went up in value to a great extent, some contend the property within that period did not appreciate to any degree in the locality of the Carslake Hotel. Witness Ogilvie, heard on behalf of the owners testified that within that period or rather from December, 1910, to the beginning of 1913, when the boom was at its height in the business district of the Carslake, there was an increase of 50 to 100 per cent. If this view be accepted in favour of the defendants, taking the property at $150,000. on the 1st December, 1910, although that amount covered the furniture, good-will, license, etc., and allowing the average increase of seventy-five per cent on the purchase price, we will arrive at the sum of $262,500. To this amount should be added the usual ten per cent for compulsory taking, for, although it may be said that Mr. Dorsey was willing to dispose of the property, it was not sold to the Government but expropriated, and the question is one of compensation and not of price under a purchase. More especially should this ten per cent be added here, because the value of the good-will, an important factor in determining the compensation payable, is not susceptible upon the evidence of being moneyed out with precision, although its substantial character is beyond dispute. The allowance of this additional ten per cent. also covers any loss and all other expenses incidental to the closing down of a going concern.

I have had the advantage of viewing the premises in question accompanied by Councel for both parties, and I am of opinion that if the sum of $288,750, figured on that basis as a whole, *en bloc* is allowed, a fair, sufficient and very liberal compensation will have been paid to the proprietors, taking into further considera-

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tion the price at which properties in the neighbourhood were sold.

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| The sum of ........................ | $ 175 ,000 .00 |
| was paid on account of the expropriation on the 21st September, 1914, and the further sum of ........................ | 45 ,000 .00 |
| was also paid on the 3rd December, 1914, making the total sum of .......... | $ 220 ,000 .00 |
| paid on account of the compensation. | |

The defendants gave up possession of the premises between the 15th and the 20th October, 1914, when the keys of the building were handed over to the Crown. The date will be fixed as of the 15th, since the profits were calculated for that year at 10½ months.

This is an expropriation matter wherein the Defendant's property has been compulsorily taken from them and where no tender or offer of any amount has been made as compensation therefor. In such a case the defendants are entitled to both costs and interest on the compensation money.

Therefore, there will be judgment as follows, viz.:

1st.—The lands and property expropriated herein are declared vested in the Crown from the 7th April, 1914, the date of the expropriation, including all such rights the Defendants had in the passage in common from Windsor Street, as shown on plan filed herein.

2nd.—The compensation is assessed at the sum of $288,750. with interest and costs.

3rd.—The defendant the Carslake Hotel Company, Limited, is entitled to be paid, upon giving to the Crown a good and sufficient title, free from all encumbrances and hypothecs, the balance of the said compensation, (it having already received the sum of $220,000. as above mentioned) namely:—

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The sum of $68,750. with interest thereon from the 15th October, 1914, to the date hereof, together with interest on the said sum of $45,000. from the 15th day of October, 1914, to the 3rd December, 1914, when the same was paid to the defendants.

4th.—The defendants are also entitled to their costs.

*Judgment accordingly.*

Solicitor for the plaintiff: *Leslie H. Boyd.*

Solicitors for the Carslake Hotel Co.: *Brown, Montgomery & McMichael.*

Solicitor for the defendant Geo. T. O. Carslake: *T. P. Butler.*

EDITOR'S NOTE :—Affirmed on appeal to the Supreme Court of Canada, June 13th 1916.