

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

1916
March 15

PLAINTIFF;

AND

JOHN COURTNEY AND ELLEN COURTNEY,
DEFENDANTS.

Expropriation—Compensation—Grocery and liquor business—License—Valuation.

The defendant J. C. had been carrying on for a long period a grocery and liquor business in the premises expropriated. The liquor side of the business was being operated at a profit, while the grocery did not yield large returns. The liquor license was only good for one year, and its renewal was dependent upon a petition being endorsed by a certain number of the ratepayers. Moreover, it was granted to the individual only so long as he continued in business in the same premises; and the defendant was an old man. At the time of the expropriation it was also shown that prohibition legislation was impending which would have put an end to the defendant's sale of liquor.

Held, that under all the circumstances the Court, in determining the amount of compensation, was not called upon to decide whether the license was an interest in land and value the same separately, but that the proper principle to follow was to compensate the defendant for the value of the premises to him and the loss of his business as a whole.

INFORMATION exhibited by the Attorney-General of Canada, seeking to have compensation assessed by the Court for certain premises in the City of Halifax used at the time of expropriation for the purposes of a grocery and liquor business.

Case tried at Halifax, N.S., June 3, 1915, before the Honourable MR. JUSTICE CASSELS.

T. S. Rogers, K.C., and *T. F. Tobin*, K.C., for plaintiff,
H. McInnes, K.C., and *H. Mellish*, K.C., for defendants.

CASSELS, J. (March 15, 1916) delivered judgment.

This is an information exhibited on behalf of His Majesty the King to have it declared that certain lands are vested in His Majesty and to have the compensation assessed. The case was tried before me at Halifax on June 3 last.

It was agreed at the close of the case in Halifax that a memorandum should be put in setting out the various

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statutes relating to the licensing of public houses, shops, etc., in Halifax, and a written argument by counsel on the question whether in assessing compensation any regard should be had to the fact that Courtney held a license permitting him to sell liquors. This statement and arguments of counsel were received towards the middle of January last.

The expropriation plan was registered on February 13, 1913, and the compensation has to be assessed as of that date. The property in question is situate on Pleasant St., in the City of Halifax, having a frontage of 64 ft. 7 in. on the east side of Pleasant St. On the south side of the property is a lane, called Gas Lane, with a width of about 20 ft., extending from Pleasant St. This lane forms the southern boundary of the property. The lot has a depth of 177 ft. and a width at the rear of 87 ft.

The defendant Courtney purchased this lot in 1883 or 1884 and erected thereon at the time the buildings now on the lot. The front part of the lot on Pleasant St. is used as a grocery store. The rear part is utilized as a store for the sale of liquors, and is entered from Gas Lane. Prior to moving into the present premises the defendant Courtney carried on a similar business on premises situate on the opposite corner, commencing in 1874 and continuing until 1884, when he removed to the present site.

During all the years from 1874 to the present time, Courtney had a shop license to sell spirituous liquors. The Crown offers \$12,800. The defendant claims \$30,300. The offer of the Crown is made up as follows: Land \$3,300; house \$8,400 and 10% is added for compulsory taking. Nothing has been allowed for good will, loss of business, value of the license, etc. The defendant acquiesces in the allowance for the house of \$8,400 but claims, according to Mr. Roper's evidence, \$4,000 as the value of the land, a difference of \$700.

If the sole question for determination were the value of the premises, the land as it stands with the buildings, and no question of good will, loss of business, or value of the license came in question, I would consider the offer of the Crown of \$11,700 a very liberal one. The way in which the valuator approached the subject is certainly a favour-

able one from the landowners' point of view. To value the land as if it were vacant and the house for what it would cost to replace it is hardly arriving at the market value of the premises as they stand. The government valuator was in a difficult position as he had nothing to guide him in the way of sales of similar property.

I do not think the valuation has been made on a proper basis. The defendant, as far as I could judge, is a respectable man. He has continuously carried on business at the premises in question and the opposite corner since the year 1874—about 39 years. During all this time he has had a shop license (which has been continued during 1914 and 1915 after the expropriation). In addition, a point not referred to, he has had his home since 1884 above the shop. His returns from the grocery business for an average of 15 years prior to expropriation have netted him an average between \$400 to \$500 per annum and from the liquor business an average of from \$2,000 to \$2,500 per annum. Altogether, in addition to his residence, he has had from \$2,500 to \$3,000 net receipts from the premises per annum.

It seems that a shop license is only good for one year and then can only be renewed on a petition endorsed by a certain number of the ratepayers and is granted to the individual and only so long as he continues in business in the same premises. I do not think I am called upon to deal with this case as if the sole question were: Is a license of the character of the one in question an interest in real estate for which compensation can be allowed?

The defendant is entitled to be compensated for the value of the premises to him and the loss of his business. Here are premises occupied since 1884 in which the defendant has carried on a prosperous business. He had the grocery business and the liquor business continuously carried on since 1873 and his license continuously renewed.

What compensation is he entitled to for the loss of this business? The question of compensation is a difficult one. It must be more or less conjectural. The defendant is a man well advanced in years and lately has not been in very good health, necessitating the employment of an extra clerk. On his death the license would no longer be an asset. Moreover, the temperance agitation and probable

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prohibition is something not to be lost sight of. A considerable number of beer drinkers would leave the vicinity when the works now under construction are finished

On the whole I think if the defendant is allowed \$17,000 to include everything, including compensation for compulsory taking, he will be fairly compensated. I understand the Crown makes no claim for rent or for occupation of the premises since February, 1913. I therefore allow no interest as the occupation is of more value to defendant than interest. The defendant is entitled to the costs of the action

If the defendants fail to agree as to the settlement for dower, a reference will be necessary, the costs to be borne by defendants, and the money can be paid into Court.

Judgment accordingly.

Solicitor for plaintiff: *T. F. Tobin.*

Solicitors for defendants: *McInnes, Mellish, Fulton and Kenney.*
