

BETWEEN

1907
 April. 22.

HIS MAJESTY THE KING..... PLAINTIFF;

AND

FRANCES R. ROGERS, ADMINISTRA-
 TRIX OF THE LATE CHARLES E.
 ROGERS, DECEASED, AND OTHERS. } DEFENDANTS.

*Expropriation—Licensed hotel—Special value of premises to owner arising
 from liquor license—Compensation.*

The Crown expropriated for the purposes of a public work certain premises which the owner used as a hotel licensed to sell liquors. The license was an annual one, but as the license laws then stood, it could be renewed in favour of the then owner, or in case of his death, of his widow; but no license could be granted to any other person for such premises. If the owner sold the property it was shown that the use to which he put it could not be continued.

Held, that while this particular use of the property added nothing to its market or selling value, it enhanced its value to the owner at the time of the expropriation, and that such was an element to be considered in determining the amount of compensation to be paid to him for the premises taken.

THIS was an information by the Attorney-General of Canada for the expropriation of certain lands required for the purposes of the Intercolonial Railway of Canada.

The facts of the case are stated in the reasons for judgment.

January 22nd, 1907.

The case was heard at Halifax.

R. T. MacIlreith and *C. F. Tremaine* for the plaintiff;

W. B. A. Ritchie, K.C., and *T. F. Tobin* for defendants.

THE JUDGE OF THE EXCHEQUER COURT now (April 22nd, 1907) delivered judgment.

The information is filed to obtain a declaration (1) that the lands and premises therein described, situated in the City of Halifax, and taken for the purposes of the Inter-colonial Railway, are vested in His Majesty; and (2) that the sum of \$6,000 is sufficient and just compensation to whomsoever may prove to be entitled thereto for and in respect of such lands and premises and for all claims in respect of any damage or loss sustained or to be sustained by reason of the entering upon, taking possession of and expropriation of the same, as stated in the information.

The lands and premises mentioned were expropriated on the 26th day of January, 1906. They were situated on Water Street, in the said city, and were known as the "Acadia Gardens Hotel." They were at the time in the possession and occupation of the owner and proprietor Charles E. Rogers, who held a hotel license for the sale of spirituous and intoxicating liquors granted him by the municipality of the City of Halifax for the said premises. Since the expropriation Charles E. Rogers has died; and his widow, the defendant Frances R. Rogers, has been appointed administratrix to his estate, and guardian of Morris Rogers, an infant. She and William S. Rogers have also been joined as heirs at law of Charles E. Rogers. There appear to be, or to have been, some incumbrances upon the property; and to avoid an enquiry before the court as to the respective rights and interests of the parties it was agreed that any declaration made as to compensation should be made in favour of the defendant Frances R. Rogers, as administratrix, as guardian, and in her own right, on condition that before payment of the amounts of such compensation she would procure and deliver to the Crown good and sufficient releases of all claims on the fund.

The only question at issue is the amount of the compensation to be awarded for the lands and premises taken. The plaintiff, by the information, offered to pay the sum

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of \$6,000. The defendants claim \$30,000. The evidence put in by the former would show that the sum of \$6,500 would be a fair amount to allow, while the testimony produced by the defendants would, if it were accepted, go to show that such compensation should be assessed at a sum ranging from \$15,000 to \$20,000.

I am quite unable to accept the higher figures. Property on Water street, in this neighbourhood had for some time before the expropriation been decreasing in value. It had lost in a large measure its former value for residential purposes, and it had not acquired any considerable value for commercial or industrial purposes. Apart from the special use which the proprietor, Charles E. Rogers, made of the premises, to which reference will be made later, the opinion of Mr. Patrick M. Duggan may be safely taken as giving their fair value when taken. He and Mr. Reid were employed by the Crown to value this and other properties. He was well qualified by experience and knowledge to make the valuation, and I found him to be fair minded, and a man of good judgment. He put the value of the property when taken at \$6,500, though he thought that that sum was more than it was really worth to the owner. That was without reference to the particular use the owner was making of it at the time. He stated on cross-examination that ten years ago the property, as a licensed hotel, would have been worth \$8,000 or \$10,000 to the owner; but he thought that the business had fallen off, and that the value of the premises had been diminished. The fair result of his evidence as a whole was that the sum of \$6,500 was large enough to cover any value the premises had as a hotel with an annual license for the sale of liquors renewable at the pleasure of the City Council.

It appears, however, that from its situation these premises had some advantages for the class of business carried on therein which prevented it from sharing

equally with other properties in the neighbourhood in the depreciation in value that had undoubtedly taken place. The evidence, too, would go to show that the owner did at the time a larger business than Mr. Duggan was aware of.

With respect to the annual license held for these premises it appears that it could, as the license laws then stood, be renewed in favour of the then owner, or in case of his death, of his widow; but no license could be granted to any other person for these premises. If the owner sold the property the use to which he put it could not be continued. That particular use therefore added nothing to the market or selling value of the property. It enhanced its value to the owner, but not its actual value. It seems to me, however, that the defendants are entitled to its value to the owner at the time of the expropriation, having regard to any use he could make of it, including, of course the use he was then putting it to. As I have stated, I am quite unable to accept the values that the defendants' witnesses have put upon these premises. At the same time it appears to me that neither the sum of \$6,000 which is offered in the information, nor the sum of \$6,500 at which Mr. Duggan placed the value of the premises, is sufficient. I am not inclined, however, to go beyond the \$8,000 that he thought the premises were worth some years before. I think it will be fair to all parties to assess the compensation to be paid at that amount.

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There will be a declaration :

1. That the lands and premises described in the information are vested in His Majesty the King;
2. That the defendant Frances R. Rogers, as administratrix of the estate of the late Charles E. Rogers, and as guardian of Morris Rogers and in her own right, upon giving to the Crown good and sufficient releases and discharges from all persons having any claim thereto, is

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entitled to be paid the sum of \$8,000, with interest from the 26th day of January, 1906, as compensation for such lands and premises and for all damages arising from or incident to the taking of the same as mentioned.

I have had some doubts as to the proper disposition to be made of the question of costs in view of the large claim set up by the defendants. But there are a number of defendants, and one is a minor, and perhaps the matter did not lend itself to arrangement and accommodation. In that view the fact that a large or extravagant claim was made did not materially increase the costs.

The defendants will have their costs; such costs to be limited to the issue as to the value of the premises to the owner for the particular use or purpose he was making of them at the time they were taken.

Judgment accordingly.

Solicitor for plaintiff: *R. F. MacIlreith.*

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