

BETWEEN

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

1909
 May 17.

AND

ROSINA CONDON AND HARRY }
 CONDON..... } DEFENDANTS.

Expropriation—Compensation—Value of lands and premises taken—Market value—Goodwill—Private way used in connection with business.

- In addition to full and fair compensation for the value of lands and premises expropriated the owner carrying on business thereon is entitled to compensation for the goodwill of such business.
2. The market price of the lands taken ought to be regarded as the *prima facie* basis of valuation in awarding compensation for land. *Dodge v. The King*, (38 S. C. R. 149) followed.
 3. In this case there was a passage from a street in the rear of the premises where one of the defendants carried on a licensed liquor business, by which customers who desired to visit the bar without attracting notice could do so.

Held, that such passage enhanced the value of the property for the purposes of a bar, and so constituted an element of compensation.

INFORMATION by the Crown for the expropriation of certain lands for the purposes of public buildings in the City of Ottawa.

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

April 19th, 20th, 21st and 22nd, 1909.

The case was now heard at Ottawa.

A. Lemieux, K.C., for the defendants, contended that since the building of the Interprovincial Bridge over the Ottawa River the business increase in Sussex Street had been remarkable. The property of the defendants is a most desirable one for a hotel business; and no other centrally situated premises could be obtained except on

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Rideau or Sparks street where the values are very much higher than on Sussex street. Condon keeps a bar that is liberally patronized, and the private entrance to it from McKenzie Avenue is an element of value that ought to be considered.

The defendants are entitled to a fair and liberal compensation, with ten per cent. added to the amount for compulsory taking. The goodwill of the business must also be considered, *The Queen v. City of Toronto*, (1) *In re Wilkes' Estate*, (2) *In re Cavanagh and Grand Trunk Railway Company*, (3) *McAuley v. City of Toronto*, (4) *The King v. Rogers*, (5) *Hodge on Railways*, (6).

A. W. Fraser, K.C., for the plaintiff, contended that the sales of property in the neighborhood are the primary means of arriving at the market value of land expropriated for public purposes. *Dodge v. The King* (7). As to the goodwill, defendants are not entitled to it as it is not inherent in the land itself. *Lefebvre v. The Queen*, (8) *McPherson The Queen*, (9) *The King v. Rogers*, (10).

Mr. Lemieux replied, citing *McGoldrick v. The King*, (11) *Sutherland on Damages* (12).

CASSELS, J., now (May 17, 1909) delivered judgment.

This is an information filed by the Crown to have the value of certain property expropriated ascertained.

The property is situate on Sussex Street, in the City of Ottawa. It is situate on the west side of the street with a frontage of 33 feet and a depth of 155 feet and 9 inches running through to Mackenzie Avenue. On the property is a building erected about forty-five years ago. The main part of the building covers in the front on Sussex Street the 33 feet, with a depth of about forty feet with an

(1) Aūd. Ex. Pr. 2nd ed. p. 191.

(2) 16 Ch. D. 597.

(3) 14 Ont. L. R. 523.

(4) 18 Ont. R. 416.

(5) 11 Ex. C. R. 132.

(6) 7th ed. p. 208.

(7) 38 S.C.R. 149.

(8) 1 Ex. C.R. 121.

(9) 1 Ex. C.R. 53.

(10) 11 Ex. C.R. 132.

(11) 8 Ex. C.R. 169.

(12) 3rd ed. Vol. IV. p. 3142.

extension in the rear extending over part of the lot for about 18 feet. The building in question has been utilized as a hotel run by Condon and his wife. Mrs. Condon purchased the property in question in the year 1900 from one Landreville for the sum of \$7,000.00.

Condon and his wife had been running a hotel on the flats when the great fire of 1900 destroyed their premises. Condon, the husband had a license to sell liquor which he had transferred to the premises in question. Landreville, who was carrying on in the premises the business of a hotel under license at the time of the Condon purchase was paid nothing for his license, which he allowed to lapse, not claiming any renewal.

There is a way, one-half owned by the Condons and one-half by the adjoining property of about eight feet, which permits access from Sussex Street to the rear part of the lot. The building in question extends over part of this way.

The Crown offers the sum of \$12,500 in full for all damages sustained, including the value of the property, loss of good-will, and all other allowances for compulsory taking, moving etc.

The Condons unite their interests—Mrs. Condon as owner, Mr. Condon as licensee running the bar, and claim the sum of \$32,000 made up as follows:—

Value of land.....	\$ 10,000.00
Value of buildings.....	12,000.00
Good-will and sundries..	10,000.00
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	\$ 32,000.00

The Mackenzie Avenue property abuts on Major Hill Park. The lot is about twenty feet on the Mackenzie Avenue front below the level of the street. Besides this there is an enormous rock shelving to the east which would have to be removed to utilize this part of the lot for building purposes.

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From Mackenzie Avenue there is a passage which enables that class of customers who desire to visit the bar to do so without being noticed on the occasion of their visits thereto. While this may appear to be a trifling advantage, it nevertheless secured a number of customers for Condon's bar whose patronage might otherwise be lost to him. It is therefore, an element that enhances the value of the property for the purposes of a bar.

I considered during the trial, lasting about three days, the evidence of the witnesses produced. Since the trial I have carefully analyzed the evidence. There are a few salient points in the case which in my judgment have to be accepted as proven :—

1. I think having regard to the character of the lot, the Mackenzie Avenue frontage need not be taken into account, separately from the Sussex Street frontage. From the owner's standpoint the property should be treated as a single property valued by the Sussex Street frontage, with a frontage of 33 feet and a depth of 155 feet and 9 inches.

2. It is admitted that Condon and his wife are both respectable and estimable people and that the hotel in question is well conducted and cleanly kept.

3. It is conceded by counsel on both sides that all the witnesses are reliable and honest. They may err in their opinions but not from any intention to depart from the truth.

4. Since 1900 the value of property in Ottawa has increased greatly including the value of Sussex Street property. This is due to several causes—the increase in the population—the improvements in Ottawa itself, such as the driveway and the parks—improved electric car service, etc.

It would appear that while Sussex Street property benefits with the rest of property in Ottawa, it has not increased in value as much as property situate elsewhere.

It has certainly been helped by the building of the Inter-provincial bridge connecting Hull with Ottawa.

It may be that inasmuch as so far back as 1901 the fact became known of the intention of the Government to expropriate the Sussex Street lands, this had a tendency to prevent the values for mercantile purposes increasing in the same proportion as properties in other parts of the city.

As is usual in these cases there is a great diversity of opinion as to values. Fortunately I have a very lucid and concrete rule for my guidance furnished by the decision of the Supreme Court in *Dodge v. The King* (1) at page 155, where the learned Judge who delivered the judgment states the law as follows :

“ The market price of lands taken ought to be the *primâ facie* basis of valuation in awarding compensation for land expropriated. The compensation, for land used for a special purpose by the owner, must usually have added to the usual market price of such land a reasonable allowance measured by possibly the value of such use, and at all events the value thereof to the using owner, and the damage done to his business carried on therein, or thereon, by reason of his being turned out of possession.”

“ How can it be better ascertained than by means of the prices paid for it so recently, and up to the day before expropriation ?

There may be added, as usually is added, a percentage to cover contingencies of many kinds ” (p. 156).

In *McCauley v. City of Toronto* (2), the Chancellor of Ontario deals with the question of good-will.

With these authorities to guide me, I proceed now to deal with the evidence of the witnesses.

I think it only fair to the Condons to point out that while the evidence of purchases by the Crown of adjoin-

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1) 33 S. C. R. 149.

(2) 18 Ont. R. 416.

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ing properties is entitled to great weight as proving values, it should be borne in mind that people often prefer to accept perhaps a less sum than the value to avoid litigation.

The evidence of purchases, as stated by Mr. Justice Idington, is *primâ facie* conclusive (1).

After their purchase in 1900 the Condons expended about the sum of \$4,000 in improving the property. This was not all in permanent improvements to the building.

The defendants produced considerable evidence as to values. I put aside the evidence of Mrs. Condon and Mr. Condon, so far as the value of the land and buildings is concerned. I will have to deal later on with their evidence when dealing with the question of good-will.

Witness Cole for the defendants	
places the value of the land at	
about \$303 per foot frontage..	\$ 10,000 00
Buildings at.....	12,000 00
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	\$ 22,000 00

Witness Geo. F. Thompson :—	
Land at	\$ 9,900 00
Buildings at.....	11,591 00
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	\$ 21,491 00

He throws in 52 cents, which I do not refer to.

Witness Boyden :—	
Land at	\$ 10,000 00
Buildings at.....	12,591 00
	<hr/>
	\$ 22,591 00

Witness Bouthillier places the	
value of the buildings at.....	12,501 00

In dealing with these valuations it may be well to note that on the 30th June, 1905 Condon gave an option to one Taggart of the whole property, including good-will and everything for \$13,000. Condon states he was to

(1) See *Dodge v. The King*, 38 S. C. R. 149.

have the premises rent free for four or five years. He estimates this as worth \$1,500 per annum. Accepting his statement, and allowing \$6,000, his value would be \$19,000 at that time for everything. The sum claimed for good-will is \$10,000, and if good-will be deduced from the values placed by these witnesses. there would seem to be a great difference between Condon's idea of value and the retrospective idea of values of his witnesses.

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The valuation has to be ascertained as of the 24th December, 1907. Witness Cole points out in his evidence that there has been a large advance in values in Ottawa property between the 1st January, 1908 and the date of his giving evidence.

The witnesses for the Crown take a very different view of the values of the property from the opinions of the witnesses for the Condons.

Witness Riopel produces a list of properties purchased by him on behalf of the Crown. Exhibit No. 11 shows the various properties and prices paid. According to this evidence, and in regard to other properties sold in the neighborhood, the amount tendered by the Crown for the lands and buildings would be in excess of the proportionate prices for adjoining properties. His evidence is entitled to weight, and the prices paid would be *prima facie* evidence of the values. He does not deal with the "good-will".

Witness Simard is a purchaser of property on the East side of Sussex Street. He has been fortunate enough to become the owner of property returning him about 10½ per cent on his investment.

Witness Stewart, the Assessment	
Commissioner for the City of	
Ottawa, values the land at.....	\$ 4,000 00
And the buildings at.	8,650 00
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	\$ 12,650 00

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Witness Brown values the land at.....	4,125 00
And places a total value on the whole property (including \$500 for furnace) at.....	12,375 00
Witness Lebel values the land at.....	3,580 00
And the building at.....	8,670 00
	<hr/>
	\$ 12,250 00

He reduces this to \$11,750, deducting some allowance for moving included in his first valuation.

Witness Edey values the build- ings at.....	\$ 7,066 00
And the land at.....	4,134 00
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	\$ 11,200 00

On this testimony I have to come to a conclusion as to what amount should be paid. The Condons are entitled to full and fair compensation for the loss to them. They are not entitled to any additional sum by reason of the fact that the Crown instead of a corporation is expropriating their property.

I think a fair sum to be allowed would be \$200 per foot frontage on Sussex Street through to Mackenzie Avenue, which would amount to \$6,600.

If one takes Stewart's valuation of the buildings, viz: \$8,650.00, and the furnace at \$500.00, it would not be out of the way to allow \$9,000.00 for the buildings.

This would make for land and buildings \$15,500.

Next comes the indefinable allowance for compulsory expropriation, in other days computed at about 50 per cent. on the value, now-a-days at about 10 per cent. I do not understand the theory of the allowance. If it is intended to cover expense of moving etc., I do not see why it should be added to the value of the land. There

seems, however, to be an allowance of this character recognized.

The evidence of good-will is not satisfactory. The account produced of receipts is of no value. The offsets are not forthcoming. This much, however, is proved. The Condons have had a good living. They have been able, out of their earnings, to put by about \$1,200 per year. It is true they have worked hard and built up a good business. One of the witnesses, Brown, states that the *clientèle* would follow Mrs. Condon wherever she moves. I understand from this evidence that it was intended to intimate that she has the capacity of making her guests comfortable.

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I would allow for contingencies, moving, good-will, etc., the sum of	\$ 2,000.00
For land and buildings	15,500.00
	\$ 17,500.00

There will be judgment in favour of the defendants for \$17,500 with interest there on from the date of expropriation, in full compensation for the land and buildings taken and for all damages resulting from the said expropriation. The defendants will also have their costs.

Judgment accordingly.

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

Solicitor for defendant: *A. Lemieux.*

