

1915
May 4.

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

PLAINTIFF;

v.

MARGARET HUNTING, LUCY BARROW, AND
EMILY BELL (3 cases),

DEFENDANTS.

*Expropriation—Business property—Shopping centre—Hotel—Com-
pensation—Allowance of 10% for compulsory taking.*

The Crown, for the purpose of extending the Post Office at the city of Hamilton expropriated several properties in the shopping centre of the city, one of which was a hotel property.

Held, that the owners were entitled to be compensated according to the value of the properties as business property, and that the hotel property, though acquired in separate lots, should be valued as one property, according to the frontage of the building occupied as the hotel, taking into consideration the present state of repairs of the properties, plus an allowance for the compulsory taking.

INFORMATION to fix compensation in an expropriation of land by the Crown.

Tried before the Honourable Mr. Justice Cassels, at Hamilton, February 2, 3, 4, 1915.

J. G. Gauld, K.C., and *S. D. Biggar*, K.C., for plaintiff.

Geo. Lynch-Staunton, K.C., for defendant Hunting.

M. J. O'Reilly, K.C., for defendant Barrow.

Charles Bell, K.C., for defendant Bell.

CASSELS, J. (May 4, 1915), delivered judgment.

These cases were tried before me in Hamilton on the 2nd, 3rd and 4th days of February, 1915.

The cases arise out of an expropriation by the Crown of certain lands in Hamilton, for the extension of the post office.

The properties in question comprise four parcels of land, two of them owned by the defendant Margaret Hunting, one by Lucy Barrow, and one by Emily Bell. These four parcels of land form one continuous block on the west side of John Street, in the City of Hamilton, and extending northerly from Main Street along John Street to an alleyway between the northern boundary of the Bell property and the post office, the post office being situate on the south side of King and John Streets. It is obvious that to a very great extent the evidence applicable to one case would be applicable to all.

At the opening of the case it was agreed by the counsel for all parties that the general evidence given should be applicable to all the cases, each claimant to have the right to put in additional evidence applicable to that particular case.

The southerly property in question, which is the property of Mrs. Hunting, has a frontage on John Street of 56 feet and 2 inches, running back to a depth of 69 feet and 3 inches along and parallel to Main Street.

There are also certain rights to an alleyway on the west of the premises which is said to be of value. The title to the alleyway and the rights of the parties thereto are stated by Mr. Staunton towards the end of the evidence of Mrs. Hunting, and was accepted as accurate by the various counsel.

The next property north and immediately adjacent to the Hunting hotel property is that of Emily

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Barrow. This property has a frontage of 23 feet 4½ inches on the west side of John Street, by a depth of 69 feet 9 inches parallel to Main Street. There is also a right in the alleyway to the west.

Mrs. Hunting is the owner of the third property immediately north of the Barrow property. It has a frontage of 26 feet 7½ inches on John Street, with a depth of 79 feet 9 inches, parallel to Main Street.

The fourth property is one belonging to Emily Bell. It is adjacent to and immediately north of the Hunting property, and it has a frontage of 32 feet 2½ inches on the west side of John Street, running back 79 feet 9 inches, parallel to Main Street. This property has an advantage over the properties immediately next to it in that there is an alleyway north, giving them right of light on three different sides.

A great deal of evidence was given, a good deal of it of an unsatisfactory nature by reason of there being no sales of property in the immediate neighbourhood, namely, on John Street between Main Street and King Street. There is evidence of sales of properties within a period not far removed from the date of the expropriation, the 22nd February, 1914, on the north side of John Street between King Street and King William Street. I think it is clear from the evidence that there has been a very large advance in the value of real estate in Hamilton within the last few years. It has been shown that between the years 1901 and 1914 the population of Hamilton has about doubled, the population in 1914 reaching, according to the evidence of Vernon, the number of 100,700. I think there is no doubt that John Street should be looked upon, probably next to James Street, as the most important street leading

north and south. Main Street, at the corner of which the hotel property stands, is the street upon which the Court House is erected, and the park forming part of the lots of the Court House abut on this street. Further south some considerable distance is the station of the Canadian Pacific Railway. The haymarket is situate south of this station, and a very considerable business has been developed in that locality. I think, on the evidence, it is clear that the property on James Street and the property on the north side of King Street extending from James Street easterly to John Street, and further east, is of much more value than property on John Street south between Main and King, and prices paid for property near James Street or on King on the north side between James and John and further east, are not a safe guide in endeavouring to arrive at values on John Street south between Main and King.

A great deal of evidence was given as to the relative values of properties on John Street south between King Street and Main Street, and John Street north between King Street and William Street, the object being, I presume, to minimize as far as possible the values sought to be proved by reference to sales of property on King Street north.

My opinion is that, having regard to the evidence and the facts of the case, the property for retail shops is more valuable on John Street north between King Street and King William Street. It is conceded that King Street north from James Street to John and further east is built up and occupied by the best retail shops in the City of Hamilton. Mr. McKay, who was referred to as a very competent witness, points out that you cannot compare King Street and James Street property with the corner of John and

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Main Street. . King Street from James Street, running east, is a very wide street. It has in the centre of it what is called Gore Park. The south side of King Street, between James and John Street, is to a very great extent built up by mercantile institutions. It seems to me that what occurs to one's knowledge in outside cities is likely to happen in Hamilton as the population increases, and as the property on the north side becomes so valuable that people carrying on retail business must move, they are likely to move on to the side streets nearest to the shopping centre with its large traffic.

Coming back to the properties in question, the north-west corner of Main and John Streets, owned by Mrs. Hunting, is, I think, unquestionably the more valuable of any of the four properties in question in this action. At the present time it is difficult to see what other purpose it is adapted to than for a hotel site. Some of the witnesses have dealt with this hotel property as if it formed two parcels by reason of the fact that the 56 feet and 2 inches were acquired under different titles. I think this is an erroneous way of looking at the case. It is held as one property. The plaintiff in the information treats it as one property. It is covered by the hotel and, I think, should be valued as one property. The hotel building does not cover the whole of the lot. There is considerable space between the westerly end of the hotel and the westerly end of the boundary of the lot. For some time past the hotel has been rented to one Kempf. It is conceded that the hotel building, and in fact all the buildings on the other three properties, are in an extremely bad state of repair. Mrs. Hunting apologizes for the bad state in which her building is by reason of lack of money. The Barrow property,

slightly better, has had some \$1,500 expended upon improvements. The Bell property is also admittedly in an extremely bad shape. The explanation in regard to this property being allowed to get into such a bad shape was the probability of expropriation for the enlargement of the post office. It appears that for a considerable number of years back, Kempf, the tenant, has been paying a rental of \$135 a month, that he also agreed to expend, and did expend the sum of \$4,000 to \$4,500 in repairs out of his own pocket, which repairs would, at the end of the lease, belong to Mrs. Hunting. She was getting about \$1,620 a year rent, less \$375 taxes, which were paid by the landlady. It is true that in addition to that they would save \$4,500 by the repairs expended by the tenant, which, spread over a five years lease, would amount on an average to \$900 a year. It is quite clear that these repairs were not of a very permanent character, and will not be worth at the end of the five years the sum of \$4,500 to Mrs. Hunting. It is proved, I think, that some three years ago, the tenant Kempf offered Mrs. Hunting to expend some \$8,000 to \$10,000 in adding to the hotel property, making it more modern, the condition being that he should have a lease of ten years at a rental of \$2,400 a year, and that the improvements at the expiration of the lease should belong to Mrs. Hunting. After deducting taxes, this would have left Mrs. Hunting an annual income of about \$2,000 a year for the period of ten years, which, at five per cent. capitalized, would be about \$40,000, with the addition that she would obtain any increased value arising in the future from the probable increase in population, and consequently of values.

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The tenant Kempf states in his evidence that an expenditure of \$9,000 would add to the hotel and give him an addition of 40 rooms, in which case he would be willing to pay \$3,500 a year. With an expenditure of \$14,000, it would give him an additional storey and 60 rooms additional, for which he would be willing to pay \$4,500 a year. I find no evidence, however, of any offer being made to pay these sums, the only offer being the sum of \$2,400 previously mentioned. Mrs. Hunting places the value of the land at \$2,000 a foot frontage for the hotel property and \$1,500 a foot frontage for the property further north situate between the Barrow and the Bell properties. These prices, to my mind, are absurdly in excess of the real value from a market standpoint. What may happen in the next ten years one cannot foresee, but having regard to the present, there is no justification for any such values. Mrs. Hunting, no doubt, is much affected by the fact that the property has been held in the family for a great number of years; and she no doubt feels it hard to be deprived of it.

Waugh gives evidence in regard to the north-west corner of John and King Street. He shows what is apparent, that the property has very much increased in this locality in Hamilton between 1899 and 1912, that the value of property situate on the north-west corner of John and King Streets has very little bearing on the value of property on the north-west corner of John and Main Streets.

Mr. D'Arcy Martin's evidence is no doubt entitled to weight. He thinks, and I fancy rightly, that John Street comes next to James Street on the east as one of the leading thoroughfares of the city, and he looks forward with considerable hope to the time when property on John Street would become as valuable

as property on James Street. He has no evidence of any sales on John Street between Main and King Streets. He himself is basing his hopes more upon what may happen in the future than on any present market value. His view is that it would be better to let the property remain as a hotel site in the meanwhile to assist in carrying the property that will eventually become too valuable for a building of the character of the one on it, and would have to be replaced by either a more modern hotel or building of a different class. Therefore, in placing his value of \$1,500 a foot, he puts that as exclusive of the value of the building. It has to be borne in mind that this means carrying the property at a loss of a very considerable amount in the way of interest, and moreover it by no means follows that unless a considerable sum of money is spent in putting the hotel property in order, the tenant would continue on.

Lounsbury puts the value of the land alone without the building at \$2,000 a foot, an absurd valuation according to my idea.

McKay puts a value on the Hunting corner property of \$1,500 a foot; and the second property further north at \$1,200 a foot. When we come to the Crown's evidence, Gibbs refers to a purchase on the east side of John Street north between King and King William, situate about 21½ feet south of King William. This purchase was in January, 1912, and comprised a property consisting of 13 feet 6 inches on John Street by 76 feet in depth. There was a four-storey building on it and the price paid was \$600 a foot frontage, including the building. James Dixon refers to a property two doors west of the post office on King Street. It was sold in 1911 to one McKay for \$20,000. There were buildings on the

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property covering the whole lot, three stories in height. The property had a frontage on King Street of 19 feet 6 inches by a depth of 120 feet. The price paid was about \$1,024 a foot frontage.

Walter W. Stewart, an architect, is called as to the buildings, and gives a bad account of the state of the repair in which he found them. Referring to the Bell building, he finds 100,500 cubic feet, which could be erected new at 9½ cents a cubic foot, with the depreciation of 50%—this would bring the present value of the Bell building, according to his idea, a little under \$5,000.

The Hunting building, between the Barrow and the Bell building, 63,650 cubic feet, which he values new at 9½ cents a cubic foot, and allows off 50% for depreciation, which would bring the value to about \$3,000. The Barrow building, 58,200 cubic feet, with depreciation would come to under \$3,000. The hotel properties, the cubic contents for the addition, 4,788 cubic feet, and the hotel proper 101,750, which he values new at eleven cents a cubic foot, with a loss for depreciation of 50%, which would bring the values up, according to his idea, to about \$6,000.

Munro is another architect agreeing to a great extent with Stewart.

It is useless attempting to repeat all the evidence. I have analyzed it to a great extent in order to come to the best conclusion I could.

After the best consideration I can give to the cases, I am of opinion that the tenders should be increased. As I pointed out, the hotel property is peculiar. It is pretty difficult to arrive at the exact market value. The tender for this is \$51,360.66. I think if Mrs.

Hunting were allowed \$60,000 she would be fully compensated. In addition, I would allow \$6,000 for compulsory parting with the property, making in all \$66,000 in respect of the hotel property, and this sum I will allow.

In respect to the second property situate between the Barrow and the Bell property, if she receives \$23,000 I think she will be fully recompensed, and I also allow her \$2,300 for compulsory expropriation. I think Mrs. Hunting should have the costs of the action, and I so order.

The Barrow property is slightly in better repair. I will allow for this property \$22,000, which I think is sufficient, to which I would add \$2,200 for compulsory expropriation, and she is entitled to her costs of the action.

With respect to the Emily Bell property, in her statement of defence, she claimed the sum of \$48,000, being at the rate of \$1,500 a foot frontage. She then claims \$6,720 for the buildings, which she allows at ten-cents a cubic foot. By her particulars she allows off the sum of \$5,970. The allowance made is a sort of apology for having omitted to claim it by the defence, the total claim being \$48,750. I think if she is allowed \$32,000 she will be fairly recompensed, to which I would add 10% for the taking under compulsory powers, and she is entitled to her costs of the action.

I occupied a very considerable amount of time in analyzing all the evidence, and without making almost a complete re-copy of it, it is useless to go.

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into it more in detail than I have endeavoured to do in these reasons.

*Judgment accordingly.**

Solicitors for plaintiff: *Biggar & Treleaven.*

Solicitor for defendant Hunting: *Geo. Lynch-Staunton.*

Solicitor for defendant Barrow: *M. J. O'Reilly.*

Solicitors for defendant Bell: *Bell & Pringle.*

* Affirmed by Supreme Court of Canada, 32 D.L.R. 331.