

HIS MAJESTY THE KING (PLAINTIFF).. APPELLANT;

1942

*Dec. 3, 4, 7

AND

1943

*Feb. 2

ELGIN REALTY COMPANY, LIM-
 ITED (DEFENDANT) AND J. P.
 CRERAR AND G. W. McNAUGHTON } RESPONDENTS.
 (LIQUIDATORS; ADDED AS PARTIES RE-
 SPONDENT, BY SUGGESTION)..... }

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Crown—Expropriation of land—Amount of compensation—Appellate Court not interfering with award by Court of first instance when latter has acted on proper principles of law and amount awarded is supported by the evidence—Consideration of factors in arriving at award, including postponed value over present market value—Date to which interest allowed on amount awarded—Expropriation Act, R.S.C. 1927, c. 64, s. 32.

On an expropriation by the Crown under the *Expropriation Act*, R.S.C. 1927, c. 64, of certain city property, the Crown offered \$408,640 and the owner claimed \$600,000. Maclean J., late President of the Exchequer Court of Canada, awarded \$497,500. The Crown appealed.

Held: The President did not act on any wrong principles of law, and this Court should not interfere in the amount awarded.

In expropriation cases, when a Court of first instance, in determining the amount to be awarded, has acted upon proper principles, has not misdirected itself on any matter of law, and when the amount arrived at is supported by the evidence, an Appellate Court should not disturb its finding. (*Vézina v. The Queen*, 17 Can. S.C.R. 1, at 16, referred to).

In arriving at his conclusion, the President took many factors into consideration and examined them in a very detailed and precise manner. He did so with the view of giving to the property its value at the time of the expropriation, and, in doing so, dealt properly with its postponed value over its present market value.

The value to the owner consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined. The future advantages, therefore, may be taken into account in determining the value of the property, but in so far only as they may help to give to the property its present value. (*Cedars Rapids Manufacturing and Power Co. v. Lacoste*, [1914] A.C. 569, at 576).

Held, also, that the owner was entitled to interest at 5 per cent. per annum from the date the land was taken by the Crown to the date of the judgment of this Court, for, an appeal having been taken to this Court, the date of its judgment becomes "the date when judgment is given" within the meaning of s. 32 of the said *Expropriation Act*. (The discretion of the Minister of Finance to allow interest under s. 53 of the *Exchequer Court Act* may be exercised only from the date of the final determination of the amount until payment by the Government).

PRESENT:—Rinfret, Davis, Kerwin, Hudson and Taschereau JJ.

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APPEAL by the Crown, plaintiff, from the judgment of Maclean J., late President of the Exchequer Court of Canada, dated February 26, 1942, awarding to the defendant the sum of \$497,500, together with interest thereon at the rate of 5 per cent. per annum from August 17, 1939 (the date of expropriation) to the date of the judgment, in full compensation for the lands and premises in question, expropriated by the Crown under the *Expropriation Act*, R.S.C. 1927, c. 64, and also for all damages arising out of the said expropriation. The Crown had offered \$408,640. The defendant had claimed \$600,000, and it entered a cross-appeal, but this was later abandoned. The lands taken by the Crown are in the City of Ottawa, on Elgin street, between Queen street and Albert street, and have a frontage of 198 feet, 8 inches, on Elgin street, and a frontage of about 132.64 feet on both Queen street and Albert street, and have a superficial area of 26,388 square feet.

F. P. Varcoe K.C. and *W. R. Jackett* for the appellant.

J. R. Cartwright K.C. and *H. P. Hill Jr.* for the respondents.

The judgment of the Court was delivered by

TASCHEREAU, J.—This is an appeal from the judgment of the late Mr. Justice Maclean, President of the Exchequer Court of Canada, pronounced on the 26th of February, 1942, granting to the Elgin Realty Company, Limited, a sum of \$497,500, with interest from the 17th of August, 1939, in full compensation for its lands and premises expropriated by the appellant. The Crown offered \$408,640 and the defendant claimed \$600,000. The Crown now appeals, and the respondent also entered a cross-appeal, which was later abandoned, so that we are concerned only with the main appeal.

The lands taken are located in Ottawa on Elgin street, between Queen and Albert streets; they have a frontage of 132 feet on both streets, and of 198 feet and 8 inches on Elgin street, and the superficial area is of 26,388 square feet. On these expropriated lands, were originally three buildings: one, which was the largest, known as the Grand Union Hotel; the second, the Elgin Building Annex, and the third was the Elgin Cottage. In 1918, additional floors

were added to the Annex and alterations were made so that they could be used as an office building. From that time until the date of expropriation, the building has been used by the appellant under a lease subject to cancellation on three months notice. The total costs of the lands, buildings and repairs amounted to approximately \$350,000.

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The only point in issue, apart from the question of interest, and with which I will deal later, is whether the amount awarded by the learned President should be varied by this Court.

In expropriation cases it is settled, I think, that when determining the amount, a court of first instance has acted upon proper principles, has not misdirected itself on any matter of law, and that when the amount arrived at is supported by the evidence, a Court of Appeal ought not to disturb its finding. This rule has for many years been the guiding principle in this Court, and a reference may be made to *Vézina v. The Queen* (1). At page 16, Mr. Justice Patterson, with whom concurred Strong J., Fournier J., and Taschereau J., said:—

Where the tribunal of first instance has proceeded on correct principles and does not appear to have overlooked or misapprehended any material fact, an appeal against the amount awarded will in most cases resemble an appeal against an assessment of damages in an action, which would be a hopeless proceeding unless some very special reason for the interference of the appellate court can be shown.

In order to arrive at the conclusion he has reached, the President of the Exchequer Court has taken many factors into consideration and has examined them in a very detailed and precise manner. After giving a full and complete description of the property, after taking into account its purchase price, all the expenditures made for repairs, alterations and improvements, the annual rent derived from the property and its gross and net incomes and the particular conditions of the lease, the learned President examined with much care the special adaptability of the property for particular purposes, by reason of its size and location, and the most advantageous use that could be made of it; he considered the value given to the property by the widening of Elgin street, the public improvements made in the vicinity, the value of neighbouring properties, the prices paid when the Sun Life property and the

(1) (1889) 17 Can. S.C.R. 1.

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\$497,500 was a fair compensation to be paid to the respondents.

Taschereau J. All these various factors were examined in view of giving to the property its value at the time of the expropriation. And as to the postponed value of the property over its present market value, the President said that it was:

the present worth of that postponed value that is to enter into the computation of the compensation to be awarded.

He also said:

I do not mean to say that the defendant, by reason of the special adaptability of its property for particular purposes on account of its size, shape and location, is thereby entitled to a hypothetical or speculative value which has no real existence, and therefore any remote future value must be adequately discounted.

I believe that this is an accurate statement of the law, for the value to the owner consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined. The future advantages, therefore, may be taken into account in determining the value of the property, but in so far only as they may help to give to the property its present value. (*Cedars Rapids Manufacturing and Power Co. v. Lacoste et al.*) (1).

My conclusion is, therefore, that the President did not act on any wrong principles of law, and I see no reason for interfering in the amount of the award.

In his reasons for judgment, the learned trial Judge does not deal with the question of interest, but, the formal judgment grants interest at the rate of 5 per cent. from the 17th of August, 1939, until the date of the judgment of the Exchequer Court. The respondents claim that interest should now be granted until the date of the judgment of this Court.

The appellant submits that in the event of the appeal being dismissed, no direction as to interest can be given by this Court, and that the Exchequer Court judgment should remain unaltered.

(1) [1914] A.C. 569, at 576.

It was pursuant to sections 27 and 28 of the *Expropriation Act* (R.S.C. 1927, Chapter 64) that the Attorney General of Canada caused to be exhibited the information in this matter. Section 32 of the same Act deals with the question of interest and reads as follows:—

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32. Interest at the rate of five per centum per annum may be allowed on such compensation money from the time when the land or property was acquired, taken or injuriously affected to the date when judgment is given; but no person to whom has been tendered a sum equal to or greater than the amount to which the Court finds him entitled shall be allowed any interest on such compensation money for any time subsequent to the date of such tender.

An appeal having been taken to this Court, I believe that the date of the judgment of this Court becomes "the date when judgment is given" within the meaning of the above section.

It would indeed be unfair to hold otherwise. The property was producing a very substantial revenue, of which the respondent is now deprived; and the only compensation that can be given for this loss is by way of interest on the money awarded, which stands in place of the property which has been expropriated and from which the appellant derives revenues.

It has been submitted that under section 53 of the *Exchequer Court Act*, the payment of interest is left to the discretion of the Minister of Finance. The Minister has under this section power to allow interest at the rate of 4 per cent., but this discretion may be exercised only from the date of the final determination of the amount, until the moneys are paid by the Government.

My conclusion is that the respondent is entitled to interest at the rate of 5 per cent. per annum, from the date the land has been taken, to the date of the judgment of this Court, and that this appeal should be dismissed with costs.

Appeal dismissed with costs. Respondent entitled to interest as stated in above reasons for judgment.

Solicitor for the Attorney-General of Canada: *F. P. Varcoe.*

Solicitors for the respondents: *Hill, Hill & Hill.*