

BETWEEN

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

1909

May 19.

AND

SABINA MURPHY AND GEORGE } DEFENDANTS.  
 MURPHY..... }

*Expropriation—Market value—Sales of adjoining property—Basis of valuation.*

In assessing compensation in a case of expropriation of land, the sales of adjoining properties affords a safe *prima facie* basis of valuation.

THIS was a case of expropriation of certain lands and premises in the City of Ottawa for the purpose of erecting public buildings thereon.

April 23rd and 26th, 1909.

A. W. Fraser, K.C., and H. W. McLean for the plaintiff;

H. Fisher and E. J. Daly for the defendants.

CASSELS, J., now (May 19th, 1909,) delivered judgment.

This is an information filed on behalf of the Crown against Mrs. Sabina Murphy and George Murphy, her husband, to have the value ascertained of certain lands situate on the west side of Sussex Street.

The action was discontinued against George Murphy.

The land in question has a frontage of 33½ feet on Sussex Street, with a depth of 155 feet and 9 inches running back to Mackenzie Avenue.

The Boyden lot, 98 feet, fronting on Sussex Street adjoins on the north, and the Condon property, as to the value of which I delivered judgment recently, adjoins the Boyden property on the north.

1909  
 THE KING  
 v.  
 MURPHY.  
 Reasons for  
 Judgment.

The Murphy property is situate a little over 100 feet nearer Rideau Street than the Condon property.

The Condon case differs from the present case inasmuch as in the Condon case the question of the value of the good-will had to be considered.

The lands and buildings have to be valued as of the 24th December, 1907. Considerable evidence adduced in the case of *The King v. Condon* (1) was by consent received as evidence in this case, such as the evidence showing the growth of Ottawa, etc.

I do not propose to repeat what I have written in the *Condon* case as to the principle of valuation.

The Crown offered the sum of \$16,000. The defendant claims the sum of \$35,000.

I agree with the view of the witnesses who state that the property should be viewed as a Sussex Street property with a depth of 155 feet and 9 inches running back to Mackenzie Avenue.

The main building has a frontage on Sussex Street of 33½ feet, with a depth of 72 feet. The house over the stores fronting on Sussex Street is entered from Mackenzie Avenue.

The idea of building an apartment house fronting on Mackenzie Avenue is to my mind absurd, and I think the witnesses who are of this view have a more accurate knowledge of the situation than those who conceived such an idea during the progress of the trial. To place an apartment house on a lot 33 feet by 75 feet without the right to light either north or south seems to be an absurdity. The erection of such a building would practically destroy the value of the present house.

The ideas of the witnesses vary very greatly as they happen to be either witnesses for the plaintiff or the defendant.

(1) *Ante* p. 275.

1909  
 THE KING  
 v.  
 MURPHY.  
 Reasons for  
 Judgment.

For the defendant, Noffke, an architect, places the value of the buildings at .....\$ 16,738 84

Witness Pratt values the land at...\$ 10,000 00

And the buildings at..... 15,433 00

\$ 25,433 00

Witness Morris values the land at...\$ 16,000 00

And the buildings at..... 17,000 00

\$ 33,000 00

Witness Askwith values the land at.....\$ 10,000 00

And the buildings at..... 15,305 00

\$ 25,305 00

Witness McDermott values the land at..... \$ 18,850 00

And the buildings at..... 16,000 00

\$ 34,850 00

For the Crown, witness Stewart, the Assessment Commissioner for the City of Ottawa, values the land at the sum of.....\$ 4,100 00

And the buildings at..... 12,000 00

\$ 16,100 00

Witness Brown values the land at...\$ 4,125 00

And the buildings at..... 11,836 00

Witness Stuart values the buildings at.....\$ 11,167 00

Witness Lebel values the land at...\$ 4,200 00

And the buildings at..... 11,300 00

\$ 15,500 00

1909  
 THE KING  
 v.  
 MURPHY.  
 Reasons for  
 Judgment.

I propose first to deal with the value of the land. I put aside as valueless the evidence given by Morris, who places the value of the land at \$500 per foot frontage.

He places the value of what is called the Bishop property sold to Mr. Ewart at (for the land alone) \$250 a foot frontage. This lot has a frontage on Sussex Street of 107 feet. It is a corner lot, the southeast corner of St. Patrick and Sussex. On this property are valuable buildings, not so well built as the buildings of Mr. Murphy.

Morris purchased this property, seven, eight or nine years ago (speaking of the date when giving evidence) for \$6,500 or \$7,000 including the buildings. On the 25th August, 1906, he resold to Mr. Ewart for \$17,000. The evidence would show that between August, 1906, and 1st January, 1908, there has been but little increase.

\$250 a foot for 107 feet means \$26,857 for the land alone without the buildings.

Pratt, who gave his evidence in a very fair and impartial manner, states that Sussex Street forty years ago was the main street of Ottawa.

He further states that the value of land on Sussex Street was not as high in 1900 as in 1874.

He also states that between 1900 and 1st January, 1908, land on Sussex Street has appreciated in value about 75 per cent.

Mrs. Murphy purchased the lands in question in 1871. She paid \$3,250, or practically \$100 per foot.

I think if she is allowed \$200 per foot frontage, or \$6,300 she will receive fair and full compensation.

In valuing the buildings most of the witnesses seem to take the cubic contents and what it would cost to erect them at the present time.

The question I have to deal with is the market value at the date of the expropriation. The sales of adjoining property is *prima facie* a safe basis.

Riopelle shows the prices paid for adjoining properties. They are all set out in Exhibit No. 11 in the *Condon* case. We also have the Ewart purchase and other purchases.

It may be that the knowledge as far back as 1901, of the prospective expropriation by the Crown, had the effect of depreciating the west side of Sussex Street for mercantile purposes and benefiting Dalhousie Street.

I think if Mrs. Murphy is allowed the sum of \$20,000 for land, buildings, compulsory expropriation, expense of moving, etc., it would be a fair allowance.

This amount should be paid with interest from 14th December, 1907, together with costs of action.

*Judgment accordingly.*

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

Solicitors for defendants: *Murphy & Fisher.*

1909

THE KING  
v.  
MURPHY.

Reasons for  
Judgment.