

1920  
Oct. 23.

BETWEEN:

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

AND

LYNCH'S, LIMITED, A BODY COR-  
PORATE, AND THOMAS COZZO-  
LINO..... } DEFENDANTS.

*Expropriation—Special adaptability—Compulsory taking.*

The property expropriated consisted of two lots of land one on which was a large bakery, and the other a vacant lot. The bakery was built on a slope, allowing of a high basement on the river side adjoining a siding of the railway, over which carloads of flour required for the bakery could be and were brought to their very doors, thus saving them haulage of freight.

*Held:* The special suitability of the property for the business there carried on by the owner, and the savings and additional profits derived thereby, are elements in assessing the compensation to be paid by the crown for a property expropriated. And, where there is such special suitability in a property, as compared to other neighbouring properties not so well situated for their own purposes, such property is of a special and higher value to the owners than the surrounding properties, and the court will allow them an additional amount over and above what was allowed for other properties in the neighbourhood, it being the value to the owner which must be taken into consideration.

2. Where an owner remains on the property after expropriation, and makes repairs to the buildings, and puts up temporary structures, he must assume the responsibility of such a course and its consequences, and nothing will be allowed him therefor.
3. Where the owners, owing to special adaptability of the property to the business expropriated would obviously care to retain it, 10% will be allowed for compulsory taking thereof; but nothing will be allowed for compulsory taking of a vacant lot which was unimproved and from which no revenue was derived.

INFORMATION exhibited by the Attorney-General for Canada to have the compensation for certain properties expropriated by the Crown, in the city of Halifax fixed by the Court.

*W. H. Covert and E. R. MacNutt*, for plaintiff.

*J. McG. Stewart* for defendants.

The case was tried before the Honourable Mr. Justice Audette, at the city of Halifax, on the 27th of July, 1920.

The facts are stated in the reasons for judgment.

AUDETTE J. now (October 23, 1920) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that certain lands, belonging to the defendants, were taken by the Crown, under the provisions of the Expropriation Act, for the purposes of the Canadian Government Railways, by depositing, on the 29th December, 1917, a plan and description of such lands in the office of the registrar of deeds for the county of Halifax, in the province of Nova Scotia.

The lands in question are situate in the city of Halifax between Barrington street and the dry dock, and no part thereof is under water, notwithstanding allegations to the contrary in the Information.

The extent of the area taken is in controversy between the parties. After hearing the evidence, I will accept the area of lot No. 23, at 7,025 feet, being the actual area covered by the building that had been thereon erected. With respect to lot No. 19, I find, under the evidence, that the defendants, both by

1920  
THE KING  
v.  
LYNCH'S  
LIMITED,  
A BODY  
CORPORATE  
AND  
THOMAS  
COZZOLINO.  
Reasons for  
Judgment.

1920  
 THE KING  
 v.  
 LYNCH'S  
 LIMITED,  
 A BODY  
 CORPORATE  
 AND  
 THOMAS  
 COZZOLINO.  
 Reasons for  
 Judgment.

themselves and by their predecessors, in title, had been in possession of an area of 11,960 feet for a period of upward of 20 years, and I fix the area at that figure.

A number of properties have been taken by the Crown, by the same expropriation, both on Barrington street and in that vicinity. In no case was there an amount over and above fifty cents a foot allowed for a number of other properties, together with a certain allowance for the foundation and quite a number were purchased at 20 cents a foot. All the proprietors of such lands have been satisfied with the Crown's tender and the present defendants are the only owners with whom the plaintiff has been unable to settle.

The catastrophe of the explosion which inflicted upon Halifax such disaster and upheaval occurred on the 6th December, 1917, that is 23 days before the expropriation and the properties expropriated had all been thereby badly shaken and wrecked. Part of the foundation of the defendants' property as well as the oven were left in a damaged state and compensation for the same is sought herein besides the value of the land.

The defendants were using the building erected on lot No. 23 as a large bakery, turning out between 300,000 to 350,000 loaves of bread in the year. The property, it must be admitted, was especially well adapted for the defendants' trade and business in that it was built on a slope from Barrington St., towards the railway, allowing a high basement on the river side, adjoining a spur or siding abutting to the back of this property, from which they received in car loads the flour required for their bakery. They, however, did not use the railway siding for the distribution of their bread or for small freight coming to them.

It is a well settled principle in expropriation matters that the most cogent evidence in arriving at the compensation for the land taken is the price which has been paid for similar properties in the vicinity within reasonable time from the date of the expropriation. The highest price paid for similar numerous properties, similarly situated on Barrington street, with the advantage of the slope and the access to the railway on the rear, was 50 cents a foot. *Fitzpatrick v. Township of New Liskeard* (1); *Dodge v. The King* (2).

On behalf of the defendants, one witness valued lot 23 at \$1 a foot, while the witness heard by the Crown placed a value of 50 cents. I am unable to accept this extravagant valuation of \$1, while I think that 50 cents a foot is about the real market price for that lot. But the value we seek to ascertain in the present instance, is the value to the owners who must be compensated for their loss. Through its special suitability for the business the owners were carrying on thereon, whereby for the purposes of their business they could realize savings in hauling their freight and thereby making additional profits, as compared to other properties not so well situated for their own purposes, this property was of a special and higher value to them than the actual market value thereof. And, as said in the case of *Pastoral Finance Association, Limited, v. The Minister* (3), the value of the property to the owners in such circumstances, is the amount a prudent man in the position of the owners would have been willing to give rather than fail to obtain it.

1920

THE KING  
v.  
LYNCH'S  
LIMITED,  
A BODY  
CORPORATE  
AND  
THOMAS  
COZZOLINO.

Reasons for  
Judgment.

(1) 13 Ont. W.R. 806.

(2) 38 Can. S.C.R. 149.

(3) [1914] A.C. 1083.

1920

THE KING  
v.  
LYNCH'S  
LIMITED,  
A BODY  
CORPORATE  
AND  
THOMAS  
COZZOLINO.

Reasons for  
Judgment.

The defendants, on the 6th November, 1913, bought the two lots in question herein, with the building on lot 23, as excavated at date of expropriation, for the sum of \$10,000, and there is no evidence upon the record that property has since increased in value at Halifax or that any boom in real estate has affected the value of the property. For lot No. 23, inclusive of the land and the excavation, I will allow, as a special value to the defendants in consideration of the special adaptability to their business, the sum of 65 cents a foot, something like 15 cents a foot over and above what has been allowed for the other properties in the neighbourhood.

For the salvage value of the foundation and oven including both stone and brick walls, which have ostensibly been badly shaken and wrecked by the explosion I will allow:—

For the walls.....	\$	5,666.12
and for the oven.....		1,800.00

The defendant Lynch testified he had leave to temporarily repair these foundations and remain in occupation for some time; but no satisfactory evidence has been adduced upon this question. He procured from the city his permit to build on the 28th of December, 1917, and the expropriation took place on the following day. By remaining upon the property and thus making repairs to the wall and putting up a temporary structure, the defendants assumed the responsibility of such a course and its consequences, thus waiving in advance any right to complain. *The King v. Thompson* (1); *Chambers v. London, Chatham and Dover Railway Company* (2).

(1) 18 Can. Ex. C.R. 23, at p. 30. (2) [1863] 8 L.T. 235; 11 W.R. 479.

Coming to the consideration of lot No. 19, which is a vacant and unimproved lot at the back of lot 23 and from which the defendants derived no revenue, I find, under the evidence, that an allowance of 20 cents a foot—a price paid for similar and perhaps better located property—would be a fair and just compensation. *Likely v. The King* (1):

1920  
 THE KING  
 v.  
 LYNCH'S  
 LIMITED,  
 A BODY  
 CORPORATE  
 AND  
 THOMAS  
 COZZOLINO.  
 Reasons for  
 Judgment.

The Crown, when tendering at 50 cents a foot for lot 23, and at 20 cents a foot for lot 19, had added thereto an allowance of 10% for compulsory taking. While I readily understand that this 10% might properly be allowed for lot No. 23—which had a special value to the owners for their business and that they would obviously care to retain its ownership—the same cannot be said with respect to the vacant lot No. 19. I will allow the 10% for compulsorily taking for lot 23; but no such allowance will be made for lot 19. *The King v. Hunting* (2).

Under all the circumstances of the case I have come to the conclusion of allowing for lot 23, as follows:

7,025 at 65 cents a foot.....	\$ 4,566.25
that is for the land with the excavation being of a special value to the owner.	
The salvage value of the oven.....	1,800.00
The salvage value of the walls, both of stone and brick, as damaged by the explosion.....	5,666.12
	<hr/>
	\$ 12,032.37
To which should be added 10% for compulsory taking.....	1,203.23
	<hr/>
	\$ 13,235.60

(1) 32 Can. S.C.R. 47.

(2) 32 D.L.R. 331; 27 D.L.R. 250.

1920  
 THE KING  
 v.  
 LYNCH'S  
 LIMITED,  
 A BODY  
 CORPORATE  
 AND  
 THOMAS  
 COZZOLINO.  
 ———  
 Reasons for  
 Judgment.

For lot 19:

11,960 at 20 cents a foot.....	2,392.00
--------------------------------	----------

Making in all.....	\$ 15,627.60
--------------------	--------------

Therefore, there will be judgment, as follows, to wit:

1°. The lands and property taken herein are declared vested in the Crown as of the date of the expropriation.

2°. The compensation for the land and property taken and in satisfaction of all claims and damages arising out of the expropriation, is hereby fixed at the total sum of \$15,627.60 with interest thereon from the 29th December, 1917, to the date hereof.

3°. The defendants, Lynchs,' Limited, upon giving to the Crown a good and satisfactory title free from the mortgage in favour of Thomas Cozzolino and free from all other mortgage and incumbrances upon the property, are entitled to recover the said sum of \$15,627.60 with interest as above mentioned. Failing Lynch's, Limited, to procure a release of the Cozzolino mortgage, the latter is to be paid his mortgage from the said compensation, and whatever amount, if any, remains over, will be paid to the said Lynchs,' Limited, subject always to the condition above mentioned.

4°. The defendants, Lynchs,' Limited, are also entitled to their costs.

*Judgment accordingly.*

Solicitor for plaintiff: *W. H. Covert.*

Solicitor for defendants: *W. A. Henry.*