[HIGH COURT OF AUSTRALIA.]

THE MINISTER OF STATE FOR HOME AFFAIRS . . . . . } PLAINTIFF;

AND

ROSTRON AND OTHERS . . . . DEFENDANTS.

H. C. OF A. 1914.

MELBOURNE, *Nov.* 9, 10, 11.

Isaacs J.

Land—Compulsory acquisition—Compensation—Valuation—Evidence—Lands Acquisition Act 1906 (*No.* 13 *of* 1906), *secs.* 15, 16, 28, 29, 36, 38.

In determining the amount of compensation payable under the *Lands Acquisition Act* 1906, the Court should consider the most advantageous purpose for which the land was adapted at the date in question in so far as such purpose would increase its value to the claimant, and assess the compensation on that basis.

Spencer v. *The Commonwealth*, 5 C.L.R., 418, and *In re Lucas and Chesterfield Gas and Water Board*, (1909) 1 K.B., 16, applied.

ORIGINATING SUMMONS.

This was an application under secs. 36 and 38 of the *Lands Acquisition Act* 1906 by the Minister of State for Home Affairs of the Commonwealth of Australia for the determination of a disputed claim for compensation by the defendant Lawrence Latham Rostron, for certain lands compulsorily acquired by the Commonwealth for a naval base, under secs. 15 and 16 of the said Act, by notification published in the *Commonwealth Gazette* on 16th December 1911. The defendant Rostron claimed £20,481 5s. on 12th August 1913, and the Minister on 8th October 1913 offered him £850 in satisfaction of his claim for compensation, but the claimant did not accept that offer.

The defendant is the registered proprietor of a portion of the land as administrator *cum testamento annexo*, to whom adminis-

tration of the estate of his father, Lawrence Rostron, was granted on 28th December 1907, under which will he and his sister, the defendant Ethel Annie Whiteley, are equally interested; the defendant John Gibbon Barrett was sued as the unpaid vendor of part of the lands sold to the defendant Rostron; and the defendants Hector and Hector John MacDonald were sued as the mortgagees of the lands owned by Rostron as registered proprietor and as devisee under his father's will.

Other material facts are fully set out in the judgment of *Isaacs* J.

Mann, for the plaintiff.

T. M. McInerney, for defendant Rostron.

Macindoe, for defendants MacDonald.

Cur. adv. vult.

Nov. 11.

ISAACS J. read the following judgment:—This is a proceeding under secs. 36 and 38 of the *Lands Acquisition Act* 1906 by way of application of the Minister for Home Affairs to the Court to determine a disputed claim for compensation for land compulsorily taken for a naval base in December 1911.

The defendant Rostron claimed £20,481 5s. on 12th August 1913, and the Minister on 8th October 1913 offered £850. The claimant did not accept the offer within 60 days or at all, and so the claim became by sec. 35 a disputed claim for compensation. No agreement was afterwards arrived at, the claim was not referred to arbitration, and no process in an action for compensation of the claimant was initiated. Hence the Minister's application to determine the claim.

The land consists of about 205 acres at Sandy Point on Western Port. About 171 acres are held by Rostron as the administrator of an estate in which he and his sister, Mrs. Whiteley, are equally interested beneficially; the balance being his private property. Rostron's share was mortgaged to the defendants MacDonald for £260, the interest on which was fully paid up to a date later

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than the date of acquisition. The mortgage was not actually registered, but both the Crown and the defendant Rostron admit for the purposes of this case that the MacDonalds are mortgagees.

The questions I have to decide are: first, the value of the land on 1st January 1911 (secs. 28 and 29), and, next, the amount of compensation due to the mortgagees under sec. 51, and the compensation to Barrett.

The legal principle applicable to the assessment of the value of land compulsorily acquired was settled in 1907 in *Spencer* v. *The Commonwealth* (1). I quote a passage from my own judgment, because I cannot better express my view. I there said:—"Its value is fixed by Statute as on that day. Prosperity unexpected, or depression which no man would ever have anticipated, if happening after the date named, must be alike disregarded. The facts existing on 1st January 1905" (here 1st January 1911) "are the only relevant facts, and the all important fact on that day is the opinion regarding the fair price of the land, which a hypothetical prudent purchaser would entertain, if he desired to purchase it for the most advantageous purpose for which it was adapted. The plaintiff is to be compensated; therefore he is to receive the money equivalent to the loss he has sustained by deprivation of his land, and that loss, apart from special damage not here claimed, cannot exceed what such a prudent purchaser would be prepared to give him. To arrive at the value of the land at that date, we have, as I conceive, to suppose it sold then, not by means of a forced sale, but by voluntary bargaining between the plaintiff and a purchaser, willing to trade, but neither of them so anxious to do so that he would overlook any ordinary business consideration. We must further suppose both to be perfectly acquainted with the land, and cognizant of all circumstances which might affect its value, either advantageously or prejudicially, including its situation, character, quality, proximity to conveniences or inconveniences, its surrounding features, the then present demand for land, and the likelihood, as then appearing to persons best capable of forming an opinion, of a rise or fall for what reason soever in the amount

(1) 5 C.L.R., 418, at pp. 440, 441.

which one would otherwise be willing to fix as the value of the property."

In 1908, in *In re Lucas and Chesterfield Gas and Water Board* (1), Lord *Moulton* (then *Fletcher Moulton* L.J.) said:— "The principles upon which compensation is assessed when land is taken under compulsory powers are well settled. The owner receives for the lands he gives up their equivalent, *i.e.*, that which they were worth to him in money. His property is therefore not diminished in amount, but to that extent it is compulsorily changed in form. But the equivalent is estimated on the value to him, and not on the value to the purchaser, and hence it has from the first been recognized as an absolute rule that this value is to be estimated as it stood before the grant of the compulsory powers. The owner is only to receive compensation based upon the market value of his lands as they stood before the scheme was authorized by which they are put to public uses. Subject to that he is entitled to be paid the full price for his lands, and any and every element of value which they possess must be taken into consideration in so far as they increase the value to him." His Lordship's judgment was adopted by the Privy Council, first in *Cedars Rapids Manufacturing and Power Co.* v. *Lacoste* (2) and again in *Corrie* v. *MacDermott* (3). I have to apply those principles to the evidence. The witnesses varied greatly in their estimates of value. It is only natural, in a case like the present, for such divergencies to arise. I might with advantage on this subject quote what was said on the subject by the Privy Council in *Secretary of State for Foreign Affairs* v. *Charlesworth, Pilling & Co.* (4). Lord *Hobhouse* observed:— "It is quite true that in all valuations, judicial or other, there must be room for inferences and inclinations of opinions which, being more or less conjectural, are difficult to reduce to exact reasoning or to explain to others. Everyone who has gone through the process is aware of this lack of demonstrative proof in his own mind, and knows that every expert witness called before him has had his own set of conjectures, of more or less weight according to his experience and personal sagacity. In

(1) (1909) 1 K.B., 16, at p. 29.
(2) (1914) A.C., 569.
(3) (1914) A.C., 1056; 18 C.L.R., 511.
(4) (1901) A.C., 373, at p. 391.

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such an inquiry as the present, relating to subjects abounding with uncertainties and on which there is little experience, there is more than ordinary room for such guesswork; and it would be very unfair to require an exact exposition of reasons for the conclusions arrived at."

In the present case the land is forty-eight miles from Melbourne, and seven miles from the most convenient railway station. The road by which it is approached from that station is a good road for the greater part of the distance, but for about a mile and a half is simply a track along the sand. The locality when reached is not of a business character, and the agitation for a deep water port I consider too remote to materially affect its value from the standpoint of commercial enterprise. It is sparsely populated, the nearest neighbour being a mile and three-quarters distant, the next two and a quarter miles, and the next three and a half miles away. The soil is by no means the arid unproductive material which some of the witnesses thought it to be. Actual observers, as Bewicke, Mairs and Thompson, as well as the defendant Rostron, have established the contrary. Its grazing facilities are not negligible, but at the same time not important. I find the land, however, to have been proved to be capable of producing good crops of potatoes, peas, maize and fodder generally. It has sufficient water, and a general body of humus of a valuable character for leguminous plants. As a mere agricultural proposition, however, its distance from existing markets would render its value much below what I conceive to be its best value—in other words, its true value on the principles I have indicated.

That value is for residential purposes. The distance is not excessive, and the strip of heavy sandy road is only a temporary inconvenience, and may be remedied at no distant date. The time taken by train is at present two hours and twenty minutes, and even that may in the future be improved upon. The natural surroundings—of a fine cliff, a broad expanse of water, deep in close proximity to the shore, and an extensive sea front—are picturesque, unalterable and unique.

I do not think the Crown estimates do justice to the land—not from any want of desire on the part of the witnesses to be fair, but I think they have formed an altogether too low estimate of

exceptional advantages of the situation. Its capabilities of production and for grazing add to its attractiveness for residence.

On the other hand, I am not able to rely altogether on the estimate of Mr. Parkes, because the basis from which he starts—the auction sales at Crib Point only twelve months ago—is, to my mind, unsafe. The purchasers then could hardly have failed to bear in mind what had happened in 1911.

On the whole, while acknowledging the force of Mr. *Mann's* commentary on the prices given by Rostron in 1909 in the contracts put in, I accept the conclusion of Mr. Arnold. Those contracts represented small blocks, and if, on the one hand, the prices represented what the separate owners of small blocks were then willing to take, yet, on the other hand, the willingness of Rostron to give those prices in 1909 might well be actuated by an expectation of a substantial rise. At all events a space of approximately eighteen months elapsed by January 1911, and Mr. Arnold's evidence is pointed to that date. His testimony impressed me, and he appeared to me to have formed a very fair estimate, based on fair and reasoned premises. Having to make up my mind on the materials before me, I am satisfied to accept the estimate he arrived at, namely, £7 per acre.

I therefore assess the compensation at £1,431 19s. 8d., being 204 acres 2 roods 11 perches at £7 per acre. The mortgagees are entitled to £260 and £6 10s. interest. By consent Barrett is to be paid by the Crown out of the compensation due to Rostron the sum of £35 unpaid balance of purchase money and interest calculated at contract rate up to this date.

The Crown will pay the costs of Rostron and Mrs. Whiteley—one set for the two except so far as Mrs. Whiteley has incurred costs exclusively attributable to herself—and also the costs of the mortgagees.

Order accordingly.

Solicitor, for the plaintiff, *Gordon H. Castle*, Commonwealth Crown Solicitor.

Solicitors, for the defendants, *M'Inerney, Wingrove & M'Inerney*; *Lynch & MacDonald.*

B. L.