[HIGH COURT OF AUSTRALIA.]

THE COMMONWEALTH . . . . . APPELLANT;
DEFENDANT,

AND

MILLEDGE . . . . . RESPONDENT;
PLAINTIFF.

ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

H. C. OF A. 1952-1953.

1952, ADELAIDE, *Sept.* 23, 24.

1953, MELBOURNE, *March* 6.

Dixon C.J., Webb and Kitto JJ.

Resumption—Land—Compensation—Acquisition by Commonwealth—Assessment—Value—Effect of land sales controls—Allowance for fall in purchasing power of money—Business disturbance—Existing business—Valuation for more profitable use—Lands Acquisition Act 1906-1936—(*No.* 13 *of* 1906—*No.* 60 *of* 1936), *s.* 29.

A claim for compensation was made in respect of certain land acquired under the *Lands Acquisition Act* 1906-1936 (Cth.). The following two matters in respect of which compensation was claimed, were in dispute: (1) the unimproved value of certain freehold land, and (2) the amount of compensation to be allowed for disturbance of the plaintiff's business of a dairy and racing stud. At the date fixed by the Act for assessing compensation, the price for which land might be sold was controlled by law. Valuations of the land were made by six professional valuers. The valuations differed widely, not only in result, but also in approach and choice of material. Some were made on the footing that land sales were still controlled; some on the footing of a free market; others on other hypothetical circumstances. They were all made on the basis that the land was to be considered as market-gardening land, the purpose for which, economically, it was best adapted. The trial judge, who considered all the valuers to be men of experience and integrity, assessed compensation by giving cumulative effect to the various opinions, *semble*, by taking as a figure from which to work, the average of the six valuations.

Held, by *Dixon* C.J. and *Kitto* J., that the trial judge had acted on a wrong principle.

Held, further, by the whole Court, that the value of the land was to be ascertained by asking what price would be agreed upon between a willing seller and a willing buyer, on the assumption that official consent to the sale

H. C. OF A. 1952-1953.

THE COMMONWEALTH v. MILLEDGE.

would be forthcoming but that the buyer would himself be subject to control if and when his turn came to sell, should the controls not be terminated in the meantime.

The Commonwealth v. *Arklay* (1952) 87 C.L.R. 159 applied.

Held, further, by the whole Court, that an additional sum allowed by the trial judge by reason of the fall in the purchasing power of money between the date fixed for assessment and the date of his judgment ought not to have been included.

Held, further, by *Dixon* C.J. and *Kitto* J. and, *semble*, by *Webb* J., that a claim for compensation for disturbance to an existing business conducted on land acquired under the Act could not be sustained where the land had been valued on the basis of its suitability for some more profitable use than that to which it was being put at the date of acquisition.

Standard Fuel Co. v. *Toronto Terminals Railway Co.* (1935) 3 D.L.R. 657 and *Horn* v. *Sunderland Corporation* (1941) 2 K.B. 26 followed.

Decision of the Supreme Court of South Australia (*Mayo* J.) reversed.

APPEAL from the Supreme Court of South Australia.

In an action brought by James Henry Milledge against the Commonwealth, compensation was claimed in respect of an acquisition of land effected under the *Lands Acquisition Act* 1906-1936 on 5th December 1946. The appeal related only to (1) a claim for £3,150 in respect of the unimproved value of three allotments having a total area of ten and three-quarter acres which Milledge owned in fee simple and (2) a claim for £3,011 10s. 0d. for disturbance of a dairy and racing stud business conducted on the land.

Mayo J. allowed the sum of £2,800 in respect of the unimproved value of the three allotments and the sum of £1,000 in respect of the claim for business disturbance.

From this decision the Commonwealth appealed to the High Court.

Further relevant facts are sufficiently set out in the judgment of *Dixon* C.J. and *Kitto* J.

H. G. Alderman Q.C. (with him *C. R. Colquhoun*), for the appellant.

K. L. Ward Q.C. (with him *R. Badger*), for the respondent.

Cur. adv. vult.

March 6, 1953.

The following written judgments were delivered :—

DIXON C.J. and KITTO J. This appeal is brought by the Commonwealth against a judgment given by *Mayo* J. in the Supreme Court of South Australia in an action in which the respondent sued the

Commonwealth for compensation in respect of a resumption of land effected under the *Lands Acquisition Act* 1906-1936 (Cth.).

The land to which the action related consisted of three allotments having a total area of ten and three-quarter acres of which the plaintiff had been the owner in fee simple, and two parcels having a total area of 340 acres of which the plaintiff claimed to have been the lessee.

No question now arises concerning the value of the 340 acres. As regards the ten and three-quarter acres, partial agreement was reached at the trial. The sum of £3,700 was treated by consent as covering all but two of the items for which the plaintiff claimed that allowance should be made in fixing the compensation. One of the items left outstanding was the unimproved value of the three allotments which the plaintiff owned in fee simple. For this the plaintiff had claimed £3,150, and the learned judge allowed £2,800. The other outstanding item was described as business disturbance, for which the plaintiff had claimed £3,011 10s. 0d. and his Honour allowed £1,000. The Commonwealth's appeal relates to both these items.

In relation to the unimproved value of the three allotments, a general submission was made that the learned judge had arrived at an excessive figure in consequence of an approach to the problem which ought not to be considered satisfactory. The rule has been consistently applied in this Court that on a question of valuation an appellate tribunal is not justified in substituting its own opinion for the opinion of the court below unless it is satisfied that the court below acted on a wrong principle of law or that its valuation was entirely erroneous: *Commissioner of Succession Duties* v. *Executor Trustee & Agency Co. of South Australia Ltd.* (1); *The Commonwealth* v. *Arklay* (2). In this case the Commonwealth submits that in several respects the learned trial judge erred on points of principle, and that his valuation ought not to be allowed to stand.

The date of resumption was 5th December 1946, and by virtue of s. 29 of the *Lands Acquisition Act* 1906-1936 (Cth.) the value to which regard was to be had in determining the plaintiff's compensation fell to be assessed according to the value on 1st January 1946. The evidence placed before his Honour on this issue consisted of evidence given by the plaintiff and by six professional valuers of whom three were called by each side. The plaintiff's evidence was directed in the main to explaining the physical characteristics of the land, the manner in which it had been used and developed, the income the plaintiff had derived from market-gardening (up

(1) (1947) 74 C.L.R. 358, at p. 367. (2) (1952) 87 C.L.R. 159, at p. 174.

H. C. OF A. 1952-1953.

THE COMMONWEALTH v. MILLEDGE.

Dixon C.J. Kitto J.

to 1937), dairying, and running a racing stud, and the damage he claimed to have suffered by having to sell his stock in consequence of the resumption. Each of the valuers expressed an opinion as to the value of the land on the material date, and gave reasons based upon a consideration of one or more sales of land which he regarded as comparable with the land resumed. They all considered that the best economic use to which the land could be put was that of market-gardening and valued it on that footing. And of course each valued the land as at 1st January 1946. But they were not at one in their selection of the sales which should or might be taken into consideration as affording a guide to the value they had to determine or in adjusting the prices given so as to allow for differences of time, location, physical condition of the land, or the effect of land sales control. They applied different views as to whether the basis of valuation should be the price likely to be officially approved under the system of land sales control in operation at the material date, or the price likely to be obtained on a free market, or the price likely to be obtained in other hypothetical circumstances. Naturally enough, the results they reached differed widely. Two of the plaintiff's witnesses, Leader and Sutton, agreed in valuing the land at £275 per acre or £2,956 in all, but, while Leader assumed a completely uncontrolled sale, Sutton's figure was one which he considered would be approved on a controlled sale. The plaintiff's third witness Taplin arrived at a value of £300 per acre for ten acres and £150 per acre for the remaining three-quarters of an acre, or a total of £3,112 10s. 0d. It is not clear what view he applied as to the effect of controls. Of the defendant's witnesses, Moyle, after considering a number of sales, valued the land at £135 per acre or £1,460, allowing something over the price he considered to be obtainable under controls; Ferris, who treated only one sale of other land as being comparable, valued nine acres at £150 per acre and one and three-quarter acres at £80 per acre, or £1,565 in all, but he conceded that an uncontrolled price would exceed £200 per acre; and Wyles, who took into consideration a number of sales and allowed ten per centum over controlled prices, valued the land at £140 per acre or £1,505.

The learned judge formed a confident opinion that all six of these valuers were men of experience and integrity, and he drew no distinction amongst them in regard to soundness of judgment or otherwise. Since they differed so widely, not only in result but in approach and in choice of material, the task presented to a judge to whom they all seemed equally reliable was one which could not be satisfactorily performed in any other way than by making a

critical selection of the most helpful facts from the mass of information provided by the evidence, and applying correct principles in the light of the selected material. Unfortunately it does not appear from the judgment which his Honour delivered that he dealt with the matter in this way. He did not make any choice amongst the proved sales of other lands for the purpose of finding a basis for any reasoning of his own. Indeed he expressed the view, although he does not seem to have acted upon it, that the true basis for computation is not that to be found in one comparable sale, but in the average of a number, the larger the number the more acceptable the result. "Such a statistical average", he added, "will tend to eliminate the effect of the individual peculiarities (if any) of those in the transactions". We do not find it possible to give countenance to this view. Perhaps it would be safer to work from an average of several prices than from one price if the sales were substantially contemporaneous sales of parcels of land which were identical in all material respects, but it must be rarely, if ever, that a process of averaging sale prices can be anything but fallacious.

What his Honour appears to have done is to put aside the evidence of sales—he said he could not pick a sale or sales that satisfied him as closely comparable—and to take, as a figure from which to work, the average of the valuations of the six expert witnesses. The various opinions, he said, can be given cumulative effect; and he proceeded: "In that manner each opinion may be deemed to provide some reason for attracting the value towards the figure given. By thus giving, as it were, group consequence to the totality, the idiosyncracies of the individual opinions tend to be eliminated". We think that a valuation made on this basis ought not to be sustained. Even if all the witnesses had used the same material as one another, and had approached the problem in the same way, the average of the values they respectively reached would most likely be a figure which each of them would consider to be wrong. But what is worse is that it would be a figure not arrived at by the application by the court of the established principles of valuation. These objections apply here, with the addition that the differences between the valuers in point of materials and approach made an averaging process a source of error mathematically as well as legally. It must be conceded that his Honour does not expressly say that he took an average of the six valuations; but if that is not the meaning of his language, at least his words cannot be understood as describing any method which pursues the principles laid down from time to time in this Court and in the Privy Council. It is no answer to say, as counsel for the plaintiff

H. C. OF A. 1952-1953.

THE COMMONWEALTH v. MILLEDGE.

Dixon C.J. Kitto J.

said in argument, that the question was essentially a jury question and was so treated by his Honour. It was indeed a jury question, in the sense that it was to be decided, not by a strict adherence to precise arithmetical calculations, but by a commonsense endeavour, after consideration of all the material before the court, to fix a sum satisfactory to the mind of the court as representing the value contained in the land on 1st January 1946. But to say that the question was a jury question is not to say that it admitted of solution by accepting the opinions of all the experts as equally reliable and going through a process capable of being described as giving group consequence to the totality. The problem was not to eliminate the idiosyncracies of the individual opinions; it was to form an estimate which really satisfied his Honour's mind as being the value of the property to the plaintiff on the material date.

Then his Honour took another step. He allowed an additional sum by reason of the fall in the purchasing power of money between 1st January 1946 and the date of his judgment. It is true that he never lost sight of the fact that his task was to fix the value of the land as at the former date; but he said this: "Although the value of the subject land is to be estimated as at 1st January 1946 the process does not, as it were, pretend that payment has been made as on that date. Here payment has been made in part, and there may be a balance still to be discharged. The purchasing power of money as at the date or dates of settlement will be the proper medium equating monetary value. I apprehend it will necessitate the fixing of a higher figure than would have been proper on 1st January 1946 to equalise the purchasing power of a smaller sum several years ago". His Honour finally reached the figure of £2,800, which was substantially higher than the average of the values supported by the witnesses, saying that he was able to approximate a proper figure as on 1st January 1946 "having due regard to the current purchasing power of money at the present time". How much he actually allowed for the effects of the inflation which the currency had suffered in the interval does not appear. Nor does it appear how his Honour fixed his allowance in view of the payments which had in fact been made on account of the compensation. It may be added in passing that there was no material in the evidence upon which a finding could be made as to the precise extent to which money lost purchasing power after 1st January 1946, and it seems probable that his Honour simply gave effect to his own general impressions on this subject.

The substantial objection to the course his Honour pursued is that he was engaged in assessing compensation according to a

statutory standard which made no provision for variations in the value of currency between the valuation date and the date of payment. Whether the application of this standard in times of extreme financial instability would provide the just terms which s. 51 (xxxi.) of the Constitution requires is a question concerning the validity of acquisitions under the Act. This Court has already held in *Grace Bros. Pty. Ltd.* v. *The Commonwealth* (1), that the Act satisfies the requirements of s. 51 (xxxi.). In that case the topic was adverted to by *Dixon* J. (2), and observations were made upon it in *Bank of New South Wales* v. *The Commonwealth* by *Latham* C.J. (3), by *Starke* J. (4) and by *Dixon* J. (5). But the point to be observed here is that *Mayo* J. was trying an action to determine the amount of the compensation payable under and in accordance with the Act, and the validity of the acquisition of the plaintiff's land was necessarily to be assumed. His Honour's task of assessing compensation was therefore limited by the provisions of the Act, and, in particular, the task of valuing the land was limited to assessing the value which the land possessed on 1st January 1946. The principles applicable have been explained, since his Honour gave judgment in this case, in *The Commonwealth of Australia* v. *Arklay* (6). It was necessary for his Honour to ask himself, what price would be agreed upon between a willing seller and a willing buyer, on the assumption that official consent to the sale would be forthcoming but that the buyer would himself be subject to control if and when his turn came to sell, should the controls not be terminated in the meantime. His Honour put to himself a shorter but not necessarily different question. He asked, what sum would a reasonable person in the plaintiff's place be prepared to pay for all the existing and potential advantages on the appropriate date. And again he asked himself, what would land in the particular situation be likely to fetch in all the circumstances subsisting on the specified date. The answer to such questions must necessarily be the same at whatever distance of time after the specified date it is given. To fix a different amount in May 1952 from that which would have been thought right on 1st January 1946 is possible only if a different question is taken as the test of value. The question which his Honour seems ultimately to have asked himself is, what would a reasonable person in the plaintiff's place have been prepared, not to pay on the specified date, but to agree on the specified date to pay over a period after

(1) (1946) 72 C.L.R. 269.
(2) (1946) 72 C.L.R., at pp. 291-292.
(3) (1948) 76 C.L.R. 1, at p. 221.
(4) (1948) 76 C.L.R., at p. 317.
(5) (1948) 76 C.L.R., at pp. 339-341.
(6) (1952) 87 C.L.R. 159.

H. C. OF A. 1952-1953.

THE COMMONWEALTH v. MILLEDGE.

Dixon C.J. Kitto J.

that date, had he known how money would depreciate in the meantime. In a word, the hypothetical sale which his Honour took as his test of value seems to have been a sale upon terms of deferred payment. A valuation made according to such a test clearly cannot stand.

There remains the item of the plaintiff's claim described as business disturbance. Though it was considered convenient in this case, as it often is, to deal with this topic as a separate matter, it must always be remembered that disturbance is not a separate subject of compensation. Its relevance to the assessment of the amount which will compensate the former owner for the loss of his land lies in the fact that the compensation must include not only the amount which any prudent purchaser would find it worth his while to give for the land, but also any additional amount which a prudent purchaser in the position of the owner, that is to say with a business such as the owner's already established on the land, would find it worth his while to pay sooner than fail to obtain the land. But a prudent purchaser in the position of the owner would not increase his price on account of the special advantage he would get by not having to move his business, unless the amount he would have been prepared to pay apart from that special advantage was the value of the land considered as a site for that kind of business. Disturbance, in other words, is relevant only to the assessment of the difference between, on the one hand, the value of the land to a hypothetical purchaser for the kind of use to which the owner was putting it at the date of resumption and, on the other hand, the value of the land to the actual owner himself for the precise use to which he was putting it at that date. It follows that if in the first instance the land is valued on the basis of its suitability for some more profitable form of use, there can be no justification for making an addition to the value so ascertained because of disturbance. There would be an obvious inconsistency in doing so, as the Privy Council pointed out in *Standard Fuel Co.* v. *Toronto Terminals Railway Co.* (1). The Court of Appeal took the same view in *Horn* v. *Sunderland Corporation* (2). The Master of the Rolls in that case expressed the point in these words: "He (the owner) can only realize the building value in the market if he is willing to abandon his farming business to obtain the higher price. If he claims compensation for disturbance of his farming business, he is saying that he is not willing to abandon his farming business, that is, that he ought to be treated as a man who, but for the compulsory purchase, would have continued to farm the land, and,

(1) (1935) 3 D.L.R. 657.

(2) (1941) 2 K.B. 26.

therefore, could not have realized the building value " (1). The conclusion reached was that when land being used for agricultural purposes is ripe for building, and compensation for its compulsory acquisition is fixed on the basis of its value as building land, compensation for disturbance of the agricultural business should only be awarded to the extent (if any) that the value of the land for agricultural purposes together with the compensation for disturbance exceeds the compensation payable on the basis of the land being building land.

It has already been mentioned that the valuers who gave evidence before *Mayo* J. all made their valuations on the basis that the plaintiff's land was to be considered as market-gardening land, and the learned judge also acted upon that basis. But the plaintiff was not conducting a market-gardening business on the land when it was acquired by the Commonwealth. He was using the land for the purposes of a dairy and racing stud, which economically were not the purposes for which it was best adapted. He made no attempt to show what the land would be worth as a site for a dairy and a racing stud, and therefore he laid no foundation for any allowance in the court's valuation in respect of disturbance of his dairy and racing stud businesses. *Mayo* J., however, gave detailed consideration to evidence suggesting that the acquisition of the land had caused the plaintiff loss in respect of pasture for his cattle, loss on the sale of the dairy herd, and loss of a year's natural increase in the stud breeding business. He was unable to feel satisfied that the alleged losses by disturbance were established, but nevertheless he allowed the sum of £1,000 for business disturbance. His reason for so doing was that in the course of negotiations between the parties the Commonwealth had offered to pay an amount described in a letter written to the plaintiff's solicitors by the Surveyor-General and Chief Property Officer as including £1,000 for " compensation including loss of trade etc., and sale expenses ". His Honour regarded the letter as conceding that to the extent which it mentioned the item had been found on examination to be justified, and on that basis he allowed the sum of £1,000. The letter does not appear to us to be fairly open to this construction, and indeed we think that it could not properly be relied upon as making any kind of admission. But in any case, for the reasons above given, it was an error to make an allowance for disturbance of business by way of addition to a valuation placed upon the land as a site adapted to a more profitable use than that to which the plaintiff was putting it.

(1) (1941) 2 K.B., at p. 35.

H. C. OF A. 1952-1953.

THE COMMONWEALTH v. MILLEDGE.

Dixon C.J. Kitto J.

The judgment which his Honour gave must therefore be set aside, and the outstanding items must be considered afresh. No opinion we could form on the materials before us would be satisfactory, and the only proper course, in default of agreement between the parties, is to order a new trial of the action. It is to be hoped, however, that the parties, who have already achieved a substantial measure of agreement, will now be able, with the views of this Court before them, to obviate the expense of further proceedings.

The appeal will be allowed. The verdict and judgment of the Supreme Court will be set aside, and a new trial ordered. The costs of the former trial should be costs in the new trial and subject accordingly to the discretion which the court determining the action upon the new trial will possess under s. 37 (d) of the *Lands Acquisition Act* 1906-1936 (Cth.). As regards the costs of this appeal, the case presents some features which seem to us to call for a departure from the usual course. Neither party appears to be in any degree responsible for the situation which has arisen. By far the most important purpose which the Commonwealth had to serve by its appeal was to obtain a ruling upon the question, which was one of general principle, as to whether it was permissible to increase the amount of the compensation payable by reason of the decline which has occurred in the purchasing power of money. This question, however, did not arise in the present case because of any contention made on behalf of the respondent at the trial, and in this Court his counsel did not contest the principle for which the Commonwealth argued but based his answer on an interpretation he placed upon the reasons of *Mayo* J. In all the circumstances it appears to us that the justice of the case will be met by leaving the parties to abide their own costs of the appeal. There will therefore be no order as to those costs.

WEBB J. This is an appeal by the Commonwealth from a judgment of the Supreme Court of South Australia (*Mayo* J.) awarding £2,500 to the respondent, Milledge, being a balance of compensation for and in respect of the compulsory acquisition of land by the appellant from the respondent under the *Lands Acquisition Act* 1906-1936.

There was a number of items of claim before the Supreme Court but eventually only two matters were in dispute, i.e. : (1) the unimproved value of the freehold ; and (2) the amount of compensation, if any, for business disturbance.

As to (1) : His Honour in his reasons for judgment observed that the value of the land acquired must be expressed in terms of

money, and, after referring to *Spencer* v. *The Commonwealth* (1), he added that " The previous owner should be placed by the monetary measure in a position as nearly similar as possible to that in which he was prior to being dispossessed ". As to this see *Grace Bros. Pty. Ltd.* v. *The Commonwealth*, per *Dixon* J. (2).

However, there is no contest about the accuracy of this observation, but his Honour further observed: (1) that an " element of difficulty in the present problem results from comparable sales being at prices limited by reason of some statute or regulation. Theoretically sales that are so restricted in price are not at the actual value at the date of sale but at a figure related to an earlier date. The same therefore do not represent (even if made on 1st January last preceding the date of acquisition of the subject land, i.e. the material date), the value on that date as prescribed by s. 29. A price that theoretically represents value as in 1942, and not the value say on 1st January 1946, itself requires an adjustment. To compute value by reference to controlled prices will always bring the same to the date in respect whereof the control relates and not January 1st preceding the date of acquisition of the subject land. Under the *Lands Acquisition Act* compensation is to be based on the real value on the proper date and not an amount adjusted to conform to the fiction imposed by another enactment "; and (2) that " although the value of the subject land is to be estimated as at 1st January 1946 the process does not, as it were, pretend that payment has been made as on that date. Here payment has been made in part, and there may be a balance still to be discharged. The purchasing power of money as at the date or dates of settlement will be the proper medium equating monetary value. I apprehend it will necessitate the fixing of a higher figure than would have been proper on 1st January 1946 to equalise the purchasing power of a smaller sum several years ago: e.g. *Pamment* v. *Pawelski* (3) ".

As I understand these two observations they indicate that his Honour disregarded the existence of the price control on the sales of land at the crucial date, that is 1st January 1946, and so failed to apply the principles enunciated by this Court in *The Commonwealth* v. *Arklay* (4) where it is stated that: " What has to be ascertained as a measure of value is what the willing seller would demand, on the assumption that the consent of the controller would be forthcoming, and what a willing buyer would give, on the like assumption, on the footing that he is a buyer who

(1) (1907) 5 C.L.R. 418.
(2) (1946) 72 C.L.R. 269, at p. 290.
(3) (1949) 79 C.L.R. 406, at p. 411.
(4) (1952) 87 C.L.R. 159.

H. C. OF A. 1952-1953.

THE COMMONWEALTH v. MILLEDGE.

Webb J.

must himself submit to the controls if and when his turn came to sell, should they not in the meantime be terminated. The least price at which a vendor could be reasonably expected to sell in these circumstances would be a price which would include, in addition to the price fixed by the controller if it could be ascertained, a sum to compensate him for the present value of the enhanced price which the purchaser might expect ultimately to obtain. This would be an ordinary business consideration which no vendor could be expected to overlook: *McMahon* v. *Housing Commission of N.S.W.*; *McMahon* v. *The Valuer-General* (1). This sum might be difficult to estimate but difficulty of estimation should never deter a Court from allowing in the assessment of compensation every item of value which should properly be taken into account. Useful examples of the way in which this retention value has been calculated and taken into account will be found in the judgments of *Ligertwood* J. in *W. H. Burford & Sons Ltd.* v. *The Commonwealth* (2) and *Abbott* J. in *Ellis* v. *The Commonwealth* (3) . . . The question itself may be directly answered by a consideration of the character of the subject land, its annual value and profitable uses and the evidence of valuers as to the demand for like properties and what a vendor could reasonably expect to obtain if the market were free from a purchaser who was himself subject to the controls.

The meaning of 'value' in s. 28 (1) (*a*) of the Act must be interpreted against the background of the Constitution which in s. 51 (xxxi.) requires that legislation for the acquisition of property shall afford just terms. As already explained that does not mean that in assessing compensation a system of price control existing on the crucial date should be ignored" (4).

The judgment of the Supreme Court was given before the judgment of this Court in *Arklay's Case* (5).

In no reported case in this Court or in any other Australian court, as far as I am aware, has the compensation for land been fixed at a higher figure in order to equalise the purchasing power of a smaller sum on the crucial date. I can see nothing in the *Lands Acquisition Act* warranting that course. There was no argument before this Court to the contrary.

As to (2): the compensation for business disturbance: the Minister's offer of £1,000 was not, I think, evidence by way of an admission. When it was made the question whether, and to what extent, compensation would be payable for business disturbance

(1) (1946) 16 L.G.R. 54, at p. 56.
(2) (1949) S.A.S.R. 310.
(3) (1950) S.A.S.R. 30.
(4) (1952) 87 C.L.R., at pp. 171-172, 174.
(5) (1952) 87 C.L.R. 159.

would have depended upon the particular basis of valuation of the acquired land that the court might thereafter see fit to adopt. Compensation for loss of business on a dairying and trotting stud basis would be assessed differently from compensation arrived at on a market garden basis.

I would allow the appeal, set aside the judgment of the Supreme Court, and order a new trial.

Appeal allowed. Verdict and judgment of the Supreme Court set aside. Order that a new trial be had between the parties. Costs of the former trial to be dealt with by the order of the court determining the action upon such new trial. No order as to the costs of this appeal.

Solicitor for the appellant, *D. D. Bell*, Crown Solicitor for the Commonwealth.

Solicitor for the respondent, *Badger & Badger*.

B. H.