(1909) 05 CAL CK 0037

Calcutta High Court

Case No: None

R.H. Wernicke and Others and The Amalgamated Tea Estates Co., Ld.		APPELLANT
	Vs	
The Secretary of State for India in Council		RESPONDENT

Date of Decision: May 3, 1909

Judgement

Doss, J.

This is an appeal from the judgment of the District Judge of Purneah and Darjeeling, dated the 25th May 1907, determining on a reference u/s 19 of the Land Acquisition Act, the amount of compensation payable for land acquired for public purposes. The declaration is dated the 31st January 1906] and was published on the 7th February 1906, the purpose of the acquisition being the extension of the rifle range in the villages of Lebong" and Pandan at Darjeeling. The claimants are (1) the owners of the Pandan Tea Estate, and (2) The Amalgamated Tea Co., Ld., as proprietors of the Lebong Minchi Tea Estate.

2. The area of land acquired belonging to the claimants, first party, is 11 acres 2 roods 30 poles of which 7 acres 1 rood 2 poles is under tea.

3. The area of land acquired belonging to the claimants, second party, is 2 acres 1 rood 30 poles of which 2 roods is under tea. The Deputy Commissioner of Darjeeling valued the tea land at Rs. 400 per acre and the waste land at Rs. GO per acre, and awarded compensation on that basis. He awarded Rs. 1,000 as compensation for severance, but awarded none for the rest of the tea estate being injuriously affected by the acquisition. The total award in favour of the claimant, 1st party, was Rs. 4,682-14, including statutory allowances, and that in favour of the claimants, 2nd party, Rs. 593-11, including statutory allowances.

4. The claimants, 1st party, in their statements of claims made two alternative claims. The first claim was on the basis of the value of land in the vicinity and was for Rs. 46,965-9. This included the market value of the land, the value of the tea bushes thereon, damages for severance and injurious affection and statutory compensation. The second claim was made on the rental basis and was for Rs. 57,365-9; this included the capitalized value of the rental paid by Government for the use of the land, the value of stone upon the land, the price of the tea bushes, damages on account of severance and injurious affection and statutory compensation. Before the District Judge the claimants, 1st party, did not press their claim on the basis of value of the land but rested the same on the rental basis.

5. It appears that from before 1898 a greater portion of this land has been, and is now being used as a rifle range of the Cantonment at Lebong and for the Darjeeling volunteers. For such uses the Military Authorities have been paying a rental of Rs 1,0 0 annually. The letter, Ex. 3, dated the 7th June 1898, from the Deputy Secretary to the Government of India to Lieutenant-General commanding the Forces in Bengal, shows that an attempt was made by the Military Authorities to purchase the requisite amount of land by private treaty, the price of Rs. 31,500, which, was then asked for it, being considered prohibitive, the idea of purchasing the land was abandoned, and the leasing of the land from year to year was continued until the present acquisition. The claimants, 1st party, claimed compensation on the basis of this rental at 20 years'' purchase. The learned District Judge has awarded to them compensation on this basis at 10 years'' purchase, and has also given them compensation for the value of the tea lands taken at Rs. 400 per acre. He has given them Rs. 1,000 as compensation for severance but has given none for injurious affection of the rest of the lands. He has assessed the total compensation to be given to the claimants 1st party, at Rs. 16,118-10, inclusive of the statutory allowances. He. assessed the compensation payable to the claimants, 2nd party, at the same amount as that awarded by the Deputy Commissioner.

6. The claimants 1st party, have preferred Appeal No. 264/''of 1907, and the 2nd party have preferred Appeal No. 277 of 1907. The Secretary of/State has filed a cross-objection.

7. The principal grounds raised in the appeal of the claimants, 1st party, are--(1) that the rental ought to have been capitalized at 20 years'' purchase; (2) that the value of the stone lying on the surface of the land ought, to have been given; (3) that the tea land hall beer under-valued; (4) that- the, damages'' awarded for severance are too small; and'' (5) that damages ought to have been awarded for injurious affection of the surrounding land by reason of the acquisition.

8. The grounds raised in the appeal of the 2nd party are the same as those in the other appeal, with this difference only that no exception is taken to the compensation awarded on the rental basis, as that land has not been assessed on that basis. The principal ground taken in the cross-objection preferred on behalf of the Secretary of State is that in assessing compensation, the Court below ought not to have taken into account the

annual rental of Rs. 1,000, which the Military Authorities have been paying for the use of the land as a rifle range, and ought not to have assessed the capitalized value of this rental as forming a portion of the market value of the land.

9. Having regard to the nature of the contentions advanced on either side, it will, perhaps, be convenient to deal with the appeals and the cross-objections together.

10. A part from the compensation to which a claimant in any particular case may be entitled on other heads, the compensation to be awarded for the land acquired is tinder Section 23, Clause 1 of Act I of 1894, the market value of the land at the date of the publication of the declaration. But the meaning attached to the term market value" is not defined in the Act, nor is any concise statement of it to be found, so far, as I am aware, in any of the judicial decisions in this country. The definition of the market value of a property, as laid down by the American Courts, in condemnation (i. e., acquisition) proceeding; is--" the price which it will bring, when it is offered for sale by one who desires bat is not obliged to sell, and is bought by one who is under no necessity of having it." See Stewart v. Ohio Pac R.R. Co. 38 W. Va. 438 : 18 S.E. 604; Lewis on Eminent Domain, 2nd Edition; Section 478; Pittsburgh, etc. Ry. Co. v. Vance 115 P St. 325 : 8 Att. 764 and Guyandol Valley by Co. v. Bushirh 57 W. Va. 417 : 110 Ame St . 785. What the elements are which must be taken into consideration in determining such market value, and what value ought to be assessed for each of such elements, are matters often, beset with no little difficulty. It is clear, however, on the authorities as well as upon principle and reason that in estimating the market value of land, the purpose for which the land is taken should not be taken into consideration; for, if it were so done, the result virtually would be that the public would be purchasing, as it were, its own improvements. The measure of compensation, indeed, is not what the person who takes the land will gain by taking it, but what the person from whom it is taken will lose by having it taken from him or, in other words, the owner is only entitled to receive for the lands he gives up, their proper equivalent, and this equivalent is estimated not on the value to the purchaser but on the value to the owner--See Stebbing v. Metropolitan Board of Works L.R. 6 Q.B. 37; Manmatha Nath Mitter v. Secretary of State for India 25 C. 194 : 24 I.A. 177; Secretary of State for Foreign Affairs v. Charlesworth Pilling and Co. (1901) A.C. 373 : 28 I.A. 121 : 26 B.1; In Re: Cumtess Ossalinsky and Manchester Corporation Brown and Allan"s Law of Compensation 2nd Edition p. 659. A second proposition may also be taken as conclusively established that the special, though natural, adaptability of the land for the purposes for which it is taken, is an important element to be taken into consideration in determining the market value of the land. It is quite true " observed Grave, 3. in Ossalinsky and Manchester Corporation Brown and Allan"s Law of Compensation 2nd Edition p. 659, before cited, " that land might be rightly valued at more than its value as agricultural land, if the land had any other capabilities for railway land or irrigating purposes, or for water works, or for anything else, and they are reasonable and fair capabilities, not far fetched hypothetical capabilities, but reasonably fair contingencies. Those are fair things to be considered by an arbitrator." In Boom Co. v. Patterson 98 U.S.

403 the Supreme Court of the United States laid down that, as a general rule, the compensation to the owner is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future." See also In the matter of Farman Street 17 Wend. 669, Guyandot Valley Railway Co. v. Buskirk 57 W. Va. 417 : 110 Ame. 785. A third proposition is equally well established that any enhancement in the value, consequent on the construction of works authorized by the statute, or consequent on any scheme for the appropriation of the land for any public use, must be excluded from consideration. Sec Penny v. Penny L.R. 5 Ex. 227; In Re: Gough and Aspatria Silloth and District Joint Watir Board (1904) I.K.B. 417 : 73 L.J.K.B. 228 : 90 L.T. 43 : 52 W.R. 552 : 68 J.P. 229 : 20 T.L.R. 179, In Re: Lucas and Chesterfield Gas and Water Board (1909) 1 K.B. 10. In the last mentioned case, land had been compulsorily taken for the purpose of making a reservoir, and the land has special adaptability for the construction of a reservoir. The Court of Appeal held that, in determining the value arising from such special adaptability, the tribunal should have regard to the contingent value arising from the possibility of the land coming into the market when required for the particular purpose and, not to the value of the realised possibility arising from the fact of the promoters having obtained statutory powers for the construction of the reservoir. In that case at p. 28 of the report, Vaughan William, L. J., observed as follows: And further that the umpire in the present case, by his answers to the questions, sent to him by the Court of Appeal, has plainly shown that in his judgment the contingent value of the probability and the realized value, by reason of the promoters having obtained Parliamentary powers to take the land, are identical. I think this is so, and that, as in the answers to the questions it appears that the umpire has treated the probability and the realised probability as identical for the purposes of valuation, he has gone on a wrong basis, and that we ought to send the award back to him in order that ho may value the possibility of the site going into the market as being required for the enlargement for the Water Works and not on the basis of a realized possibility or on account of the promoters having obtained from Parliament compulsory powers. The value of that possibility as stated by Collins, M. R., in In Re: Gough and Aspatria, etc, Water Board (1904) I.K.B. 417 : 73 L.J.K.B. 228 : 90 L.T. 43 : 52 W.R. 552 : 68 J.P. 229 : 20 T.L.R. 179, is a question entirely for the umpire. It may be that the adaptability of the land for the purpose of enlarging the reservoir was so unique that you will give a value little less than that which he would give if dealing with the realized possibility. But in my judgment he ought to value the possibility and not the realised possibility."

11. Turning now to the facts of the present case, it appears that the land acquired is in the vicinity of the Lebong Cantonment and is at a distance only of about five minutes'' walk from it and is very nearly level with the parade ground. There is no other land suitable for a rifle range in the immediate neighbourhood. This is the finding of the learned District Judge which is amply borne out by the evidence. Besides, it appears from the evidence of Dr. Seal and Major Haiq that a range is necessary for the Cantonment at Lebong and the volunteers at Darjeeling. It is quite obvious, therefore, that by its position and

conformation the special adaptability of the land for its use as a rifle range is beyond question. When the European population of the District of Darjeeling increased and a Military Cantonment was established at Lebong, and volunteering became more and more popular, the suitability of the land for a rifle range came to be recognized by the public, and this element entered as a factor in the market value of the land. It is also clear from the facts, just stated, that the land in question not only possesses such special adaptability but that this adaptability is unique. I am, therefore, of opinion that, in estimating the market value of the land, special value must be attached to those elements. I do not think that the fact that the Military Authorities have annually paid the rental of Rs. 1,000 for the use of this land can properly be regarded as forming an essential element in the market value of the land and a proper measure of the special adaptability which it possesses. It is a factor purely adventitious, brought into existence not by the intrinsic value of the land to the owner but by the necessity and urgency of the purposes for which the land has been subsequently acquired. In McKinney v. Nushville 102 Tenu. 131 : 73 Am. St. Rep. 859 a certain property was, by reason of its location, more valuable for saloon purposes than any other, and at the time of the condemnation (i, e., acquisition) proceedings it was under lease for a term of five years for a good annual rental, and was then used to carry on a saloon business. It was contended on behalf of the owner that he was entitled to compensation on the basis of this annual rental, which, indeed, was the highest rental which any one would give for the property. The Supreme Court of Tennesse held that, in estimating the market value of the property, all of the capabilities of the property, and all of the legitimate uses to which it may be applied or for which it is adapted, are to be considered, and not merely the condition it is in, and the use to which it is at the time applied by the owner. The trial Judge in his charge to the jury said : In considering the uses for which the property was adapted, you must consider all legitimate purposes for which it may be used, and must not confine yourselves to any one special or particular use as going to indicate its value." This was held to be a good charge. I think that neither the Deputy Commissioner nor the District Judge has followed the correct principle in assessing compensation in this case. The proper principle, in my opinion, is to ascertain the market value of the land taking into consideration the special value which ought to be attached to the special advantages possessed by the land, namely, its proximity to the Lebong Cantonment, its special adaptability for a rifle range and the unique character of such adaptability. The annual profit from the land in question is estimated by Mr. Wernicke at Rs. 56-4 per acre. Mr. Baker puts the outturn at 2 3/4 to 3 mds. and Mr. Shannon at 2 mds. According to this evidence, the value of the land at 10 years'' purchase would be about 11s. 560 per acre. The Deputy Commissioner assessed Rs. 100 per acre, and the learned District Judge has accepted that valuation. In doing so, be has allowed 10 years, purchase of the rental. I agree with him in this, because it appears from the evidence of several witnesses both on behalf of the claimants and the Secretary of State that money invested in tea in Darjeeling District is expected to yield about 10 percent, and that a garden generally sells at 10 times the annual profit. It may be that the value of similar tea lands in other localities is Rs. 400 per acre, and I am not disposed to differ from the learned District Judge in his estimate of the value of the tea

land per acre, but I think he has omitted to take into consideration the fact that the value of the and in question must have appreciated since the establishment of the Lebong Cantonment in its immediate neighbourhood. I think Rs. 500 per acre may be roughly estimated as the appreciated value of this land by reason of its proximity to the Cantonment. To this ought, in my opinion, to be added Rs. 200 per acre on account of the natural and special adaptability of the land and the unique character of such adaptability for a rifle range. This gives a total sum of Rs. 700 per acre. In assessing the value of the portion of the land which is waste, its special adaptability for a rifle range as influencing its value in the market, though, perhaps, it may not be of any use to the owner as tea land, ought also to be taken into consideration. I would assess such land at Rs. 300 per acre. Therefore, the value of 7 acres 1 rood 10 poles of tea land at Rs. 700 per acre is Rs. 5,093-12 and that of 4 acre 1 rood 20 poles of waste land at Rs. 300 per acre is Rs. 1,312-8 giving a total of Rs. 6,406-4.

12. The next question for consideration is the amount of compensation, if any, to which the claimants are entitled for severance of the land acquired from their remaining lands.

13. In strict theory, the true measure of damages, when part of an entire tract is taken, is the depreciation in value of the, remaining tract; or, which amounts to the same thing, the difference in the value of the whole tract immediately before and immediately after the acquisition. See Queen v. Brown L.R. 2 Q.B. 630; Sharp v. United States 191 U.S. 341 : 112 Fed. Rep. 893. The claimants in this case, however, have, on the authority of the. case of Baraoora Tea Co. v. The Secretary of State for India 28 C. 685 claimed damages on account of severance on the basis of increased cost in working the remaining portion of the garden. The capitalized value of such increased working charges may, roughly speaking, be regarded as the quantum of the depreciation in the market value of the remaining portion of the garden. This additional expense has been estimated by the claimants by the loss of time incurred by the coolies of the garden having to travel long distances in reaching the tea lands above and below the strip taken.

14. The claimants, 1st party, estimated the annual increased cost at Rs. 127 and capitalizing this sumat 20 years'' purchase they claimed Rs. 2,540 as compensation for severance, Rs. 300 for the construction of a new road; and Rs. 500 as the value of this tea bushes which will hare to be destroyed in making the road. The Deputy Commissioner awarded them a lamp sum of Rs. 1,000 as covering all these expenses. The District Judge has accepted this award as a reasonable, if not an exact, estimate of the damages sustained in consequence of severances.

15. On a consideration of the evidence which has been adduced in support of this part of the claim, I am not satisfied that the finding of the Court below is wrong. I am unable to accept the claimants'' estimate of the increased cost of working as fairly accurate, nor do I think that the claimants are entitled to have the capitalized value of the annual cost at more than 10 years'' purchase. It is noteworthy that in the last cited case too, the increased annual working charges were capitalized at 10 years'' purchase.

16. As regards the question of compensation, if any, to which the claimants, 1st party, are entitled by reason of the acquisition injuriously affecting the 8 acres of tea lands behind the butts, it is to be observed that these claimants have estimated their damages under this head on the same basis as that on which they estimated their damages on account of severance, namely, the increased cost of working the 8 acres due to stoppage of work during the time firing is practised.

17. The damages under this head have been claimed at the same amount as that which has been claimed on account of severance. As the District Judge assessed compensation on the basis of the rental of Rs. 1,000 per annum paid by Government for the use of the land, and as such rental included compensation for the injuries which the other lands of the claimants, 1st party, were likely to suffer by reason of the use of the land as a rifle range, he allowed no compensation under this head. I have already held that this annual rental cannot, under the peculiar circumstance of this case, be accepted as the proper basis for assessing the market value of the land acquired, and I have assessed such market value quite irrespective of any damage which the adjoining lands of the claimants may possibly suffer by reason of the acquired land being used as a rifle range. The claimants are, therefore, in my opinion, entitled to same compensation for the 8 acres of tea land behind the butts being injuriously affected by reason of the acquisition. There can be no doubt that it is extremely unsafe to work on land situated behind the butts when firing is going on, and the consequent loss of time must inevitably increase the cost of cultivation. The Deputy Commissioner declined to award compensation under this head on the ground that if the use of any land is interfered with, the owner can claim damages and force Government to acquire it. This reasoning, it should be remarked, fails to take account of the palpably obvious fact that the liability to such serious and constant interference must inevitably tend to depreciate the market value of that land. In Cowper Essex v. Local Board for Acton L.R. 14 A.C.153 where a portion of the owner''s land was acquired for sewage work, it was contended that if nuisance arose from negligence in the user, there was a right of action. In answer to this argument, Lord Halsbury L. C, in delivering his opinion to the House of Lords thus observed : I do not think it is any answer to the people who complain of the establishment of sewage works in their neighbourhood that, if and when the sewage works became a nuisance, in the proper and real sense of that word, such works can be restrained by injunction. Land is certainly more marketable when it is free from works of that character than when such works are established, although the neighbours may have the ordinary right of citizens to engage in litigation against such works when they become a nuisance." In the same case Lord Watson after discussing various cases, summed up his conclusion thus: "It appears to me to be the result of these authorities which are binding upon this House that a proprietor is entitled to compensation for depreciation of the value of his other lands, in so far as such depreciation is due to the anticipated legal use of works to be constructed upon the land which has been taken from him under compulsory powers." Applying this principle to the facts of the case, before the House, His Lordship proceeded to observe thus, " and the kind of depreciation which the jury had in view appears to me to be ejusdem generis with

that arising from traffic upon a public thoroughfare. Neither the use of sewage works, nor such traffic,amounts in itself, to a legal nuisance ; but the existence of either may alter the character of land in the neighbourhood, and diminish its value in the market." See also Duke of Buccleuch v. Metropolitan Board of Works (18).

19. It seems to me that if the reason assigned by the Deputy Commissioner were well founded, the result would be to practically put an end to all possible claims for compensation on the ground of the remaining lands of the owner being injuriously affected by the user of the part taken. This is opposed to the mainfest intentions of the statute and the principle on which compensation for all losses sustained by the owner is awarded. I should assess compensation under the head of injurious affection at the same amount as that which has been assessed on account of severance, that is Rs. 1,000.

19. I do not think that the plaintiffs are I entitled to any separate compensation for value of stone on the land. In the Court below, the claimants, 1st party, claimed Rs. 14,863 as the value of stone. This included , stone below as well as above the surface. But before us the claim was confined to stone on the surface, and the value of such stone was estimated at Rs. 4,000. I think it is clear upon the evidence that in sales of tea estates the value of stone on the land is not taken into account. As I have assessed the value of the tea land acquired according to its market value, it follows that the value, if any, of the stone on the land, cannot be separately taken into account nor the value of the tea bushes either.

20. No question has been raised as to the compensation given for the trees. The claimant, 1st party, is entitled to statutory allowance only on the amount of compensation awarded for the market value of the land and not on the compensation assessed for damages for severance or for other lands being injuriously affected by the acquisition.

21. The claimants, 2nd party, are entitled to have their tea land and waste land assessed at the rate of Rs. 700 and Rs. 300 respectively. Therefore, the value of 2 roods of tea lands which have been taken from them is Rs. 350, and that of 1 acre 3 roods 30 poles of waste-land at Rs. 300 per acre is Rs. 693-12. To this must be added Rs. 200 as the value of houses and trees. (18) L. R. 5 H. L. 418. The result, therefore, is that the claimant 1st party, are entitled to the following sums,

	Rs. a. p.
Market value of the land	6,406 4 0
Compensation for severance ...	1,000 0 0
Compensation for injurious affection ...	1,000 0 0
Rs.	8,406 4 0

Statutory allowance at 15 per cent. on Rs. 6,406 ...	960 14 0
Rs.	9,367 2 0

The claimants, second party, are entitled to the following sums viz :

	Rs. a. p.
Market value of the land	1,033 12 0
Compensation for houses and trees ...	200 00
Statutory allowance at 15 per cent. on Rs. 1,033-12 ...	154 14 0
Rs.	1,388 10 0

22. The claimants, 1st party, are entitled to the total sum of Rs. 9,367-2, and the claimants, 2nd party to the total sum of Rs. 1,388-10.

23. The appeals are dismissed with costs, and the cross-objections are partially decreed with costs in proportion.

Richardson, J.

24. These appeals arise out of a reference made by the Deputy Commissioner of Darjeeling, as Land Acquisition Collector, to the District Judge of Purnea u/s 19 of the Land Acquisition Act (I of 1894).

25. The land in question consists of 11 acres 2 roods and 30 poles, formerly comprised in the Pandam Tea Estate and 2 acres 1 rood and 30 poles, formerly comprised in the Le-bong Minchi Tea Estate. The land is situated not far from the Lebong Cantonment, near Darjeeling, and was acquired in pursuance of a declaration published in the Calcutta Gazette of 7th February, 1906, for the purposes of a rifle range for the use of the troops stationed at Lebong and for the use of certain volunteer corps, whose head-quarters are not Darjeeling. It is not contended that, any of: these volunteer corps was in a position to purchase a rifle range on its own account or that any volunteer corps in this country is expected, or able, to provide itself with a rifle range from its own funds. The claimants, at whose instance the reference was made, are the owners respectively of the two Tea Estates, who were dissatisfied with the award made by the Collector, I will deal first with the claim made on behalf of the Pandsim Tea Estates.

26. The Collector treated the land as tea garden land. Me estimated the market value of the land under tea (7 acres 1 rood 10 poles) at Rs. 400 an acre and the market value of the remainder which is not under tea at Rs. 60 an acre. Including a small sum for trees

(Rs. 15) the statutory allowances (Rs. 480-6) and compensation for injurious affection (Rs. 1,000) he awarded Rs. 4,682-14-0. The owners claimed according to one valuation said to be on the basis of land in the vicinity Rs. 46,965-9-0 and according to an alternative valuation said to be " upon a rental basis " Rs. 57,365-9-0. Both claims are obviously swollen and both include substantial sum on account of market value, standing crops, damages sustained by severances, damage to adjoining property, and statutory compensation. The claims only differ in respect of the amount entered for market value and statutory compensation. In the lower appellate Court the claim on the basis of land in the vicinity (including Rs. 25,907-4-0 for market value) was abandoned and the appellants relied solely upon the alternative claim in which the market value of the land is estimated at Rs. 34,863. This last mentioned sum comprises two items about which most of the controversy has arisen:

(1) Rental of user of land capitalized Rs. 20,000.

(2) Value of stone upon land Rs. 14,863. The former item has reference to the fact that the Government has been paying Rs. 1,000 a year for the use as a rifle range of the greater portion of the land acquired. This arrangement has been in force for some years, and is, I gather, on annual arrangement terminable at the pleasure as of the Government. It is contended that because this payment has been made the claimants are entitled to calculate the value of the land at twenty years" purchase of the sum paid The contention is so far from being reasonable that the claimants have not ventured to push it to a logical conclusion. More land has been acquired (to the West) than was before being used as a rifle range, but no addition to the annual rent has been made on this account. Nor has any deduction been made from the rent in view of the inconveniences to which the tea garden is put by the use of the land as a rifle range. The claimants make a large claim on account of injurious affection of their other lands in the future by the use of the land acquired as a rifle range. They cannot, therefore, deny that some portion of the annual payment has been made as compensation for the inconveniences which they must on their own showing have suffered in the past. Nor was it stated to us that any set off has been made on account of the rental values of the additional land acquired against that portion of the sum paid in the past which must be taken to have been paid merely as compensation.

27. I will not discuss this further because in the view I take the claimants are not entitled to the value of the land as a rifle range or rather to its value with reference to its special adaptability for that purpose, because there is no demand for rifle range in the market. To assess their claim on this basis is to assess it with reference to the use to which the land will be put by the Government, and such a claim is opposed to the express provisions of the Act (section 24 fifth clause) and Manmotha Nath Mittar v. Secretary of State for India in Council 25 C. 194 : 24 I.A. 177. The case of Gough v. The Aspatria etc. Water Board (1904) I.K.B. 417 : 73 L.J.K.B. 228 : 90 L.T. 43 : 52 W.R. 552 : 68 J.P. 229 : 20 T.L.R. 179 was referred to by Mr. Caspersz for the claimants, but that case was decided under a different statute and it was decided on the assumption that the adaptability of the site,

then in question, for the purposes of a reservoir might have effected its market value, or in other words that the site might have come into the market as a site for a reservoir irrespective of the scheme for the purpose of which it was acquired. [See the judgment of Collins M. R.] In the present case it is the duty of the Court to arrive at a finding on this very point, and on the best consideration I am able to give to the matter, my view is, that there is no value for this as a site for a rifle range apart from the fact that it is required for that purpose by the Government. It is true, however, that in the circumstances of the present case there is something further to be said which is not inconsistent with that view. The point arises thus : If the Government had never paid anything for the use of the laud as a rifle range it would be necessary to look only to the value of the land as tea garden land, it not being shown that the land can be used more lucratively, or is suitable for more lucrative use, in any other way. But it is possible that the fact that the Government has been paying a subordinate sum for the use of the land, as a rifle range may have been affected in some degree its market value. An'' intending buyer of Tea Estate might have been disposed to give more for the property on this account than he otherwise would have done. But, having regard to the nature of the arrangement with the Government and to the absence of any formal written agreement the continuance of the arrangement for any lengthened period of time would be merely speculative.

28. I am not satisfied that there is no other land in the neighbourhood of Lebong which the Government at a pinch might not have preferred to utilize or to obtain possession of for use as a rifle range instead of continuing to pay a rent which it regarded as excessive. That the rent was excessive I have little doubt and in the circumstances an excessive rent cannot reasonably be made the foundation for an excessive and fanciful claim. On the whole I do not think that the market value of the property would be more than slightly affected by so doubtful a consideration as that suggested. The inconveniences alleged by the claimants to be caused by the use of the lands as a rifle range have also to be borne in mind. When all is said, however, I think that for the reason above indicated something ought to be added to the market value as tea garden land of the land acquired. [cf. The Secretary of Slate for Foreign Affairs v. Charlesworth (1901) A.C. 373 : 26 I.A. 121 : 26 B. 1 and Holt v. Gas Light and Coke Company L.R. 7 Q.B. 728 referred to by Mr. Caspersz], It is an easy matter to come to this decision but the amount to be added is a question of more difficulty and it can only be roughly estimated. " It may be that justice is administered of a somewhat rough character, yet that is the mode of ascertaining the compensation provided by the legislature." Per Cockburn, C.J. in Graft v. L. and N.W. Railway Co. 32 L.J.Q.B. 113. The question is as to the quantum of compensation and, in my opinion, Rs. 1,000 should be sufficient.

29. The Deputy Commissioner refused to give any compensation in this connection, while the learned District Judge awarded the claimants 10 years'' purchase of the rental or Rs. 10,000. The claimants appealed to this Court from the latter decision, demanding 20 years'' purchase. The Government lodged a cross-objection to the entire amount awarded by the District Judge. In my opinion, the District Judge took a wrong or mistaken view of

this part of the case and the finding, at which I have arrived, is substantially in favour of the view contended for by the learned Advocate-General on behalf of the Secretary of State.

30. The next item to be considered relates to the stone on the land. As I have already stated Rs. 14,863 was claimed on this account in the lower Court. In appeal the claim was very properly reduced and what is now claimed is Rs. 4,000. I agree, however, with the learned District Judge that this stone, has at present no market value at all. His observations on this subject appear to me to be conclusive. I think, therefore, that the appeal of the claimants so far as it relates to the stone on the land entirely fails.

31. In addition to the sum of Rs. 10,000 calculated on the rental, the learned District Judge, adopting the Deputy Commissioner''s estimate awarded the claimants Rs. 3,187-8-0 as the market value of their land as tea garden lands. I understand that paragraphs 12 and 13 of the memorandum of appeal referred to this part of the award. I can only say that I agree entirely with the learned District Judge that the proper method to pursue is to calculate the value of the land at so much an acre and that I cannot accept the method suggested by the claimants, that method being to estimate the number of tea bushes or the land and to put a patently and absurdly extravagant price on each bush. The value of the land under tea has been estimated by the District Judge at Rs. 400 an acre and the value of the land not under tea at Rs. 60 an acre, In the memorandum of appeal no specific rate per acre is claimed and having regard to the evidence on the record I see no adequate reason for differing from the District Judge.

32. The claim for severance amounts to Rs. 3,340. Part of the tea garden will be partially severed by the new range from the main portion. The District Judge has allowed. Rs. 1,000 on this account. The claim is based on the alleged costs of making road round the land acquired and on the loss of time which will be caused by tea garden coolies having to walk round the land acquired instead of across it. For the cost of making a road the claimants ask for.

33. Rs. 300 (at Rs. 5 per 100 running feet). Rs. 500 (price of tea bushes 1/3 acre of land).

34. The increase of expense in working the garden owing to the coolies'' loss of time is estimated at Rs. 127 annually and the claim capitalizes this at 20 years'' purchase. As regards the road the amount claimed for tea bushes is clearly excessive. At the rate of Rs. 400 an acre, the value of 1/2 acre is approximately Rs. 135. The claim for Rs. 300 for making the road is not, to my mind, unreasonable and I think it may be admitted. I am not disposed to put very much faith in the calculation in which the claim for compensation on account of loss of time is based. But something is due on this account and no better method of calculation has been suggested on the other side. The estimate of Rs. 127 as the annual loss, which will be incurred by the garden, may be accepted as a more or less rough approximation to the truth. But this sum should be capitalized at 10 years'' purchase and not at 20 years'' purchase. Accordingly Rs. 300 plus Rs. 135 plus Rs. 1,270

(or in all Rs. 1,705) might be allowed for severance [Baraoora Tea Co. v. The Secretary of State for India in Council 28 C. 685. In that case also the additional expense of working the tea garden due to severance was calculated at 10 years'' purchase.

35. There remains the claim for injurious affection which is laid at Rs. 2,540. It is said that the rifle range will interfere with the working of 8 acres of land behind the butts and 1 think that there can be no doubt as to this. It will not be safe to put coolies on the land when the range is being used. Mr. Sinha for the Government contended that the contemplated injury was contingent, that it could only arise from the negligent use of the range, and that the tea garden was not entitled to compensation now but would be entitled to a remedy by suit when the injury occurred. The case to which he referred His Highness the Gaekwar of Baroda v. Gandhi Kachrabhai Kastur Chand 32 L.J.Q.B. 113 is not an adequate support for this proposition and the learned Counsel for the claimants cited good authority for the view that the tea garden is entitled to compensation now even if the injury which is contemplated be of the nature of an actionable nuisance Land Acquisition Act, Section 23 Clause fourthly Croft v. L. and N.W. Railway Co. 32 L.J.Q.B. 113; Cowper Essex v. Local Board for Acton L.R. 14 A. C. 153.

36. But it is not clear that the injury which the claimants contemplate will amount to an actionable nuisance. The Government will have the right to use the land as a rifle range and no doubt it may be presumed that it will be so used with the greatest care and circumspection. But even so, no prudent owner would put his coolies on the land behind the butts while firing was going on. I think, therefore, that the claimants are entitled to compensation on this account. They claim, as I have said, Rs. 2,540 and they have been awarded Rs. 1,000. As in the case of the claim made for severance on account of loss of time, the estimated annual loss to the garden attributable to injurious affection is Rs. 127 and the claimants ask for 20 years'' purchase of this amount. Here again I think ten years'' purchase should be awarded. The compensation'' to be given on this account might be increased from Rs. 1,000 to Rs. 1,270.

37. Nothing has, hitherto, been paid for the use of the land acquired from the Lebong Tea Estate as a rifle range. In my opinion, no cause is shown for disturbing the award made by the learned District Judge.

38. My learned brother has taken a different view on some of the questions which arise and having ventured to state the case in my own way I am content to adopt the figures at which he has arrived and the order which he proposes to make on these appeals.