

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Trent-
Stoughton v. The Barbados Water Supply
Company, Limited, from the Court of Common
Pleas of the Island of Barbados, delivered
June 30th, 1893.*

Present :

THE LORD CHANCELLOR.

LORD WATSON.

LORD HALSBURY.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

LORD SHAND.

SIR RICHARD COUCH.

[*Delivered by Lord Halsbury.*]

THIS is an Appeal from a Judgment of the Court of Common Pleas of the Island of Barbados, of the 22nd May 1891, by which the Court refused to set aside, at the instance of the Appellant, a verdict for a sum of 500*l.* awarded to him by a jury as compensation for the abstraction from his property by the Respondents of certain streams of water under the provisions of the Water Supply Act, 1886, and declined to grant him a new trial.

The short point that arises is, whether the direction given by the Chief Justice upon the question of compensation was right; and whether, also, he was right in rejecting certain evidence as to the value of the subject matter in dispute.

Two sections of the Act in question contemplate the acquisition by the Water Company of property necessary for the execution of their

works—the 11th section, which gives power to take without agreement, and the 23rd section, which gives power to purchase by agreement with the owners of any lands or streams or any estate or interest therein, for a consideration in money, any such lands or streams, and all estates and interests in such lands or streams of what kind soever.

Their Lordships are not able to follow the distinction which was sought to be established between these sections. In both of them it is assumed that compensation is to be given to the person whose property is affected by the exercise of the powers of the Act. If the property is taken it is to be paid for, and whether it is by the process of agreement or compulsorily taken under the powers of the Act is immaterial, except that in one case the parties agree, and in the other the sum is fixed by the tribunal pointed out by the statute.

The Chief Justice directed the jury that the question was, not what was the value of the interest of the Appellant in the streams, but whether he had sustained damage or loss by being deprived of their use, and that “the question was not as to the money value of the Plaintiff’s interest in the streams, . . . but was whether the Plaintiff had been using these streams in some way to his advantage, so that his being deprived of their use, from their being taken and abstracted by the Defendant Company, worked damage and loss to him.” Their Lordships are of opinion that the question was, what was the value of the interest of the Appellant in the streams, it being conceded that in the exercise by the Respondents of the powers conferred upon them by the Act, those streams had been abstracted, and that the Appellant had been deprived of the power of exercising the rights which he had up to that time possessed in respect

of them. That is "damage or loss" within the meaning of the Act. Though he never had up to that time obtained one farthing for the use of the streams, and might never have made any use of them, nevertheless, the damage or loss which he sustained was, that he was deprived of the power of using the property which was his.

The second question is in truth involved in the first. The Chief Justice rejected evidence of an offer by the Bridgetown Waterworks Company to purchase the Appellant's rights in the streams for a certain sum of money, his view apparently being that unless the Appellant had actually made some pecuniary benefit already out of the streams, the possibility of his making use of them in the future was irrelevant to the inquiry as to what was the value of his interest in them. Their Lordships are wholly unable to take that view.

Inasmuch as this matter has been twice before the Courts, and on the first occasion 1,000*l.* was given to the Appellant, and on the second occasion 500*l.* was given under a direction which their Lordships hold to be erroneous, it may be worth the consideration of the parties whether, to avoid further litigation, they should content themselves with the sum which was given on the first occasion, so as to prevent the necessity of a third trial. Their Lordships have no power to direct this course. They can only throw out the suggestion.

In the result, therefore, their Lordships will humbly report to Her Majesty that the judgment appealed from ought to be reversed, that the rule for a new trial ought to be made absolute, and that the Respondents must pay to the Appellant his costs below from the date of the order of the 6th January 1891, including the costs of the second trial, and his costs of this appeal.

