

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the West India Improvement Company v. The Attorney General of Jamaica and Philip Affleck Fraser, from the Supreme Court of Judicature of Jamaica; delivered 16th December 1893.*

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Present:

LORD WATSON.

LORD MACNAGHTEN.

LORD SHAND.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

An Act was passed in June 1889 by the Governor and Legislative Council of Jamaica, confirming a provisional agreement for the purchase of the Jamaica Railway, which was the property of the Government, by a Company to be incorporated for that purpose, and also for the construction of certain extensions of the railway by persons described as "the promoters." Section 10 authorises the promoters to construct these extensions, in accordance with plans and sections to be approved by the Director of Public Works; and subject to the provisions of Sections 20 and 23, to take and use the land requisite for that purpose, upon making full compensation for its value, and for all damage sustained by reason of the exercise of the powers vested in them. The same clause enacts that the amount of compensation is to be ascertained in

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the manner provided by the "Lands Clauses Law 1872," which, with the exception of eight sections, is incorporated with the Act.

By the 37th article of the agreement it is stipulated that "the Government shall provide the track for the said extensions, except through the limits of Kingston, Montego Bay, and Port Antonio." Outside of these limits, whilst the power to take lands for the purposes of their undertaking is by the Act vested in the promoters, the obligation to pay full compensation is made incumbent, not upon them, but upon the Government. But the Act does not authorise the promoters themselves to conduct the proceedings for ascertainment of the amount of compensation payable; and that circumstance has led to the present litigation.

Section 20 enacts that "the Director of Public Works, or some other person appointed by the Governor in that behalf, shall, on behalf and in name of the promoters, acquire for the promoters such lands, not less in width than thirty feet in excess of what is actually required for any cutting or embankment, as may be required for laying the track of, and building the stations, sidings and workshops necessary for the said railway." It also enacts that the cost of such lands, and of acquiring the same shall be paid, on the warrant of the Governor, out of the general revenues of the Island.

Section 29 enacts, *inter alia*, that "the promoters shall cause fences to be erected and maintained on each side of the railway, with such accommodation bridges, level crossings, and other works, as may be fixed by agreement with the owners of lands at the time when the amount of compensation to which they may be entitled is being settled under the Lands Clauses Law 1872." It is plain that the Legislature did not contemplate that the extent of the

accommodation works to which an owner was entitled should be fixed at any other time or in any other way; because the clause proceeds to enact that, if an owner of land adjoining the railway shall at any time require accommodation works, "beyond those fixed by agreement as "aforesaid" he can only obtain them upon complying with certain conditions, one of which is "his entering into good and sufficient agreement "to pay the entire cost of such work and of its "maintenance."

The Appellant Company are "the promoters" within the meaning of the Act. The Respondents are the Attorney-General, as representing the Government of Jamaica, and Philip Affleck Fraser, who is the person appointed by the Governor, in terms of Section 20, to acquire lands on behalf of the promoters. The parties having differed as to the extent of Mr. Fraser's statutory powers, and other matters, the Respondents brought this suit before the Supreme Court of the Colony, for a declaration to the effect that it is the duty of the Appellant Company, at their own expense, to execute and maintain such reasonable accommodation bridges, level crossings, and other works as may be fixed by agreement between Philip Affleck Fraser, as the person appointed as aforesaid, and the several owners of the lands acquired by him for the Company, at the time when the compensation to which they may be entitled is being settled under the Lands Clauses Law 1872.

The parties adjusted a special case for the opinion of the Court, the questions submitted being these:—

- "(1) Is the Director of Public Works, or the plaintiff Philip Affleck Fraser, or any other person appointed under Section 20 of the Jamaica Railway Company's Law 1889, entitled to bind

the defendants by any such agreement as that mentioned in paragraph 5 of this case ?

“ (2) If the answer to the first question is in the affirmative, is the Director of Public Works, or the plaintiff Philip Affleck Fraser, or any other person appointed under Section 20 aforesaid, entitled so to bind the defendants if the said agreement is made either (a) without their consent or (b) contrary to their express orders ?

“ (3) If either of the preceding questions is answered in the affirmative, is the cost of constructing and maintaining such bridges, level-crossings, and other accommodation works to be borne by the defendants ? ”

It was agreed, that if these questions were answered in the affirmative, the present Respondents should have judgment with costs, and that the Appellants should have judgment with costs if any one or more of them was answered in the negative.

The case was heard before Chief Justice, Sir A. G. Ellis, Mr. Justice Northcote and Mr. Justice Lumb, who answered all three questions in the affirmative, and entered judgment for the Respondents accordingly.

Their Lordships have come without difficulty to the same conclusion as the learned Judges. The terms of Section 20 appear to them to indicate that the person charged with the statutory duty of conducting the assessment of compensation to land-owners on behalf of the promoters was to be an independent official, entitled and bound to exercise his own discretion in all matters committed to him, and not a mere agent acting under the orders of the promoters. It is not easy to understand

what object could be gained by making such an appointment, if the appointee was to be subject, in all his proceedings, to the control of the promoters. The fact that the Government had a material interest, whereas the promoters had none, in reducing the amount of compensation awarded to land-owners, may account for the enactment of Section 20.

The Appellant Company did not in the argument stated for them in the special case, or in their argument upon this appeal, assert any right to interfere with Mr. Fraser in his conduct of the proceedings under the Lands Clauses Law. They maintained, however, that the making of agreements in regard to accommodation works with land-owners was beyond the scope of these proceedings, and of his statutory authority. It is certainly true that such works do not constitute compensation within the meaning of the statutes, although they are an important factor in ascertaining the amount of compensation payable. But the enactments of Section 29, taken in connection with the other provisions of the Act with reference to accommodation works, are in the opinion of their Lordships sufficient to show that the making of these agreements was intended to be a step in the proceedings towards assessment of compensation, and to form part of the duty committed to the official appointed under Section 20.

The main argument for the Appellants upon this part of the case proceeded on the assumption that the official in question had power to treat with land-owners for the execution of accommodation works, and their claim to control him in the exercise of that power was founded upon the fact that in settling the extent of accommodation works their interest was directly opposed to that of the Government. The construction of suitable works would necessarily

tend to obviate damage for which compensation would otherwise be payable; but that circumstance cannot justify a Court of Law in straining the language of the Act, so as to give the Appellants a right of control contrary to its natural interpretation. Their Lordships see no reason to suppose that the Legislature doubted, or had occasion to doubt, that the statutory official would perform the duty entrusted to him fairly and reasonably towards the Appellants as well as towards the Government. There is no need to discuss the precise limit of his power in this case, because the Respondents admit that the Appellants are only bound to execute such accommodation works as are not in excess of what may be reasonably necessary to enable land-owners whose lands are severed to continue working the property in manner accustomed, subject to no greater inconvenience than is necessarily occasioned by its severance; and the decree which they have obtained is limited to reasonable works.

These observations exhaust the first and second questions submitted in the Special Case. The third question presents an alternative. If the statutory official shall be held to have power to enter into agreements for accommodation works without the consent and contrary to the express order of the Appellants, they contend that the cost of constructing and maintaining such works must be borne by the Government. Their argument in support of that contention appeared to be based, not upon the construction of the Act of 1889, but upon a vague theory that the Court ought to give them equitable relief against the prejudice which they may sustain in cases where an excessive amount of accommodation is conceded by agreement.

By the 7th Article of the agreement, the promoters undertook to construct the extended

railway "in accordance with the specification" contained in Schedule I. thereto. Schedule I., which is also incorporated with the Act, specifies, as part of the railway works which they were thus bound to execute, "such accommodation " gates and other works as shall be stipulated " for in the conveyance of land, or may be re- " quired by law." It was conceded that there is no common law requiring the construction of such works, and that no provision is made with regard to them by the incorporated clauses of the Lands Clauses Law 1872. Section 29 of the Act of 1889 expressly provides that accommodation works, when fixed by agreement, shall be erected and maintained by the promoters. Their Lordships need hardly observe that, when the Legislature imposes upon the promoters of a railway or other undertaking, an obligation to construct and maintain works, it necessarily follows that they must bear the cost of construction and maintenance, unless there be an express or plainly implied provision to the contrary. In this case no such provision is to be found.

For these reasons their Lordships will humbly advise Her Majesty that the judgment appealed from ought to be affirmed. The Appellants must pay the costs of this appeal.

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