

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Minister for Public Works v. Hart and another, from the Supreme Court of New South Wales ; delivered the 5th February 1904.

Present at the Hearing :

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ARTHUR WILSON.

[*Delivered by Lord Lindley.*]

The question raised by this Appeal arises from the compulsory purchase of some land in Sydney, and the question is, who is to pay the costs of an action brought to recover compensation for the land taken ? This depends on the statutes of the Colony of New South Wales, and on what was done.

The statutes are 1. a Special Act called "The Darling Harbour Wharves Resumption Act" (No. 10 of 1900), and 2. "The Public Works Act" (No. 26 of 1900). This last Act repeals and consolidates former Acts to the same effect, and although not in force when the land in question was taken, it may for convenience be regarded as the governing Act in the case.

Under these Acts land for authorised works may be resumed (or, as we say, taken) by notification of the Governor published in the "Gazette" (Public Works Act, Part V., Sections 36 to 40). Upon such publication the land vests forthwith in the Minister who is the constructing authority ; and persons claiming compensation (Part V.,

Sections 94 to 99) are to serve on the Minister within 90 days, or further extended time, particulars of their estate and interest in the land resumed and of their claims for damage.

The Minister (Section 96) is then required to cause a valuation to be made of the land or of the claimant's interest, and to notify to the claimant as soon as practicable the amount of such valuation in the form scheduled to the Act which is as follows (*see* Schedule VI.):

“To A.B., claimant in respect of the land
“ hereunder described, taken under the Public
“ Works Act, 1900.

“ Take notice that the land hereunder described,
“ being that in respect of the taking whereof
“ under the authority of the aforesaid Act your
“ claim for compensation has been lodged, has
“ been valued at the sum of £ .

“(Signed) A. B., Constructing Authority.”

If (Section 97) within 90 days after service of notice of claim the Minister and claimant do not agree, the claimant may commence an action in the Supreme Court against the Minister to recover compensation. Under the Darling Harbour Wharves Resumption Act (Section 6) this action is to be tried in the Supreme Court by a Supreme Court Judge and two District Court Judges (which Court is to have the powers and duties of a jury), and power is given to the Supreme Court to make rules as to motions for a new trial of any such action.

The Court is to determine the amount to be paid to the claimant. If the amount recovered by him is a sum equal to or less than the amount of the valuation notified to the claimant, he is to pay the costs of the action, but if it is a greater sum, the costs are to be paid by the Minister (*see* Act No. 26 of 1900, Section 99).

In the present case land was resumed (by Gazette notification of the 3rd May 1900) belonging to the Respondent Peter Francis Hart,

who had built a street of houses thereon. The Respondent Frances Faucett Moran is Hart's mortgagee. The land was valued by the Government Valuers; and the Minister on the 31st December 1900 gave a notice of valuation in the scheduled form; the amount notified being 9,460*l.* It appeared from the evidence at the trial that, after receiving the notice of valuation and before taking any proceedings to enforce his claim, Hart, accompanied by Mr. Ferris, a member of the Legislature, went to see Mr. Sievers, the Official Government Valuer, and asked that the Government Valuers should reconsider their valuation. Hart urged that the cost or value of some foundations to the houses and a retaining wall had not been taken into account.

The Government Valuers having considered Hart's request increased the amount to 9,900*l.* Hart requested that the result when arrived at should be notified to Ferris on his behalf. The Valuers then reported to the Minister, who thereupon sent to Ferris the following letter:—

“ Public Works Department,
Sydney, 18th February 1901.

“ Sir,

“ With reference to your interview with
“ the Government Land Valuer respecting the
“ claim of Peter Francis Hart, junior, requesting
“ that the offer of compensation of 9,460*l.* for
“ property resumed at Darling Harbour be
“ increased, I am directed by the Minister for
“ Public Works to inform you that he has
“ approved of the payment of 9,900*l.* to the
“ claimant in lieu of 9,460*l.* previously offered.

“ I have the honour to be, Sir,
“ Your obedient Servant,
“ ROBERT HICKSON.

“ Under Secretary and Commissioner
“ for Roads.

“ W. J. Ferris, Esq., M.P.,
“ Castlereagh Street.”

This letter was received by Hart shortly after it was written, and he communicated it to his solicitors on the 5th March 1901. Mr. Hickson, who wrote the letter, referred to it in a letter to Hart's solicitors; and, on the 11th March 1901, they wrote to Mr. Hickson, saying, "Mr. Hart is not willing to accept the offer made through Mr. Ferris."

No further notification of the sum offered was made, nor was the notification of the 31st December 1900 formally amended by substituting the sum of 9,900*l.* for 9,460*l.* Moreover, it appears from the evidence of Mr. Sievers, the principal Government Valuer, that although Mr. Hart's request for an increased sum was considered by Mr. Sievers and his colleagues, they did not make any fresh valuation. His words were "in making the amended offer we gave way generally to what Mr. Hart stated, but did not increase our valuation."

The whole question before their Lordships turns upon the effect of the foregoing letter of the 18th February 1901; but before considering this point it will be convenient to state shortly what afterwards took place.

Hart refused the offer of 9,900*l.*, and he and his mortgagees brought an action against the Minister and claimed 16,500*l.* In his declaration he stated that his claim for compensation had been valued at 9,460*l.*, and no mention was made of the increased offer of 9,900*l.* The Minister put in a plea stating that the amount of the valuation which he caused to be made and notified to the Plaintiffs was 9,900*l.*, and that this sum exceeded the compensation to which the Plaintiffs were entitled. The Plaintiffs in their reply denied both statements in the plea.

The action was tried before a Judge of the Supreme Court and two District Court Judges. Evidence was gone into on both sides and the

Court fixed the compensation to be paid at 9,900*l.*, the amount offered by the letter of the 18th February 1901. The Defendant then signed Judgment for the costs of the action. The Court considered that any irregularity in the notification of the 9,900*l.* had been waived by the Plaintiffs. The Judgment was signed on the 21st April 1902.

On the 22nd May 1902 the Plaintiffs obtained from the Full Court (Stephen Acting C.J. and G. B. and A. H. Simpson, JJ.) a Rule Nisi to enter a verdict for the Plaintiffs on the issue as to the notified valuation on the grounds (1) that the verdict on the said issue was against evidence, (2) that the only valuation made and notified to the Plaintiffs in accordance with the Act was for 9,460*l.*, (3) that the Court was wrong in holding that the Plaintiffs had waived the requirements of the Act as to making and notifying the valuation, and (4) that the waiver had not been pleaded. The application to make the Rule absolute was heard on the 5th and 6th August 1902. The Court held that the Darling Harbour Resumption Court had no jurisdiction to determine the question on which the right to the costs of the action depended, viz., what was the amount of the notified valuation, and that the findings of the amended *postea* on that question were a nullity. They did not hold as a matter of law that the valuation notified on the 31st December 1900 could not be informally amended, but held that there had not been in fact any new valuation, and that the letter of the 18th February 1901 was not a notice of any valuation. They made an Order, dated the 6th August 1902, that the Judgment signed on the 21st April 1902 be amended by striking out all the findings as to notification of value, and by converting it into a judgment simply in favour of the Plaintiffs for 9,900*l.*, interest and taxed costs, thus deciding in effect

that the only notified valuation was for 9,460*l.*, and that the Minister should pay the costs of the action. The reasons of the Judges are set out in the Record pp. 60 to 66.

From this decision the Minister appeals to His Majesty in Council.

Their Lordships are of opinion that the Appeal should be allowed. The requirements of the Statute were all properly complied with in every matter of substance. There was a proper valuation of the property, and a sufficient notification of the result of such valuation. No further valuation was necessary. The valuers had all the materials for reconsidering the amount of compensation which should be offered, and neither as a matter of business nor as a matter of statutory obligation was any second valuation required. If without any further valuation a fresh notification in the form of the Schedule to the Statute had been sent in with the sum of 9,900*l.* substituted for 9,460*l.*, their Lordships can hardly conceive that any objection could have been taken to it. Certainly none could have been legally sustained.

The objection to the proceedings is thus reduced to a question of form, and form only. No doubt it would have been more regular if the letter of the 18th February 1901 had been in the form of the Schedule; but it emanated from the proper authority after a sufficient valuation by a properly constituted Board of Valuers, and on their advice. The letter is open to no ambiguity; it refers to the previous offer, and in their Lordships' opinion the Government could not legally have repudiated that letter even before they formally bound themselves to it by their plea in the action.

In their Lordships' opinion the letter of the 18th February 1901 was an amendment of the previous formal notification, and was sufficient.

The statutory enactment which refers to the form of the notice to be given of the amount of valuation is Section 96 of the General Act, No. 26 of 1900. That Section no doubt requires the Minister to inform the claimant "of the amount of such valuation by notice in the form of the 6th Schedule hereto"; and the Schedule states that the claim for compensation has been valued at £ . There was, no doubt, a non-observance of this form, and an irregularity. But it was attributable to the unusual manner in which the Minister was approached by the claimant who threw the Minister off his guard; and it would be most unjust to allow the claimant to take advantage of this irregularity. But without it he has no case whatever. Under these circumstances their Lordships do not feel compelled by the language of Section 96 to hold that the mere irregularity in form vitiates all that has been done and defeats the evident object of the Statute.

Their Lordships will humbly advise His Majesty to reverse the Judgment or Order appealed from with costs, and to restore the Judgment or Order of the Darling Harbour Resumption Court signed on the 21st April 1902.

The Respondents will pay the costs of the Appeal.
