

that, having regard to s. 85, it was not the duty of the Bank, as drawees, to pay the plaintiff when required to do so. This question is discussed by Cockburn, C.J., delivering the judgment of the Court of Appeal in *Charles v. Blackwell* (1), in construing the effect of s. 19 of 16 and 17 Vic., Cap. 59, which provides that a cheque payable to order on demand under the circumstances contemplated by s. 85 of the Indian Act shall be a sufficient authority to the Bank to pay the amount of [279] the draft to the bearer thereof. The Chief Justice says: "On refusing to pay it a second time, the bankers would not dishonour it. If the plaintiff should say, 'Yes, you have paid it, but to one who had no title to the cheque,' the answer would be that it had been paid to one to whom the banker was authorized to pay it by operation of the statute." Here the language of s. 85 is different, but it may be said that the banker had presumable authority to pay, because by the terms of the section he is discharged if he pays it. By this course of reasoning the conclusion is arrived at that the bill was not dishonoured by the Bank's refusal to pay the plaintiff in Bombay, and, therefore, that the Bank, as drawers, are not liable. This conclusion is clearly the effect of the English Act, and we think it should be accepted. But it is to be regretted that on a question of so much importance to the commercial world the answer should not be found in an express provision, but should be left to be inferred, by a process of reasoning.

We must, therefore, answer the first question in the affirmative and the second in the negative.

Attorneys for the appellants (defendants):—Messrs. *Craigie, Lynch and Owen*.

Attorneys for the respondent (plaintiff):—Messrs. *Chalk, Walker and Smetham*.

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ORIGINAL CIVIL.

Before Mr. Justice Farran and Assessors.

IN THE MATTER OF THE LAND ACQUISITION ACT X OF 1870;
MUNJI KHETSEY (*Claimant*).
[14th August, 1890.]

Land Acquisition Act, X of 1870—Compensation—Mode of determining the amount of compensation to be given—Land in vicinity of town where building is going on—Market value at time of awarding compensation, meaning of.

The recognized modes of ascertaining the value of land for the purpose of determining the amount of compensation to be allowed under the Land Acquisition Act X of 1870 are—

1. If a part or parts of the land taken up has or have been previously sold, such sales are taken as a fair basis upon which, making all proper allowances for situation, &c., to determine the value of that taken.

[280] 2. To ascertain the net annual income of the land, and to deduce its value by allowing a certain number of years' purchase of such income according to the nature of the property.

3. To find out the prices at which lands in the vicinity have been sold and purchased, and making all due allowance for situation, to deduce from such sale the price which the land in question will probably fetch if offered to the public.

In the case of land in the vicinity of a town where building is going on it would be unjust to adopt the second of the above methods, if there is a fair

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probability of the owner being able, owing to its situation, to sell or lease his land for building purposes. The value of land should be determined, not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner can dispose of it.

The market value "at the time of awarding compensation" may fairly be taken to mean "at the time when proceedings under the Act are taken."

[F., 63 P.R. 1907=83 P.W.R. 1907; R., 1 Bom L.R. 454 (457); 9 Bom. L. R. 93 (103); 9 Bom. L. R. 1232 (1239); 10 Bom. L. R. 907 (912); 11 C.L.J. 393=3 Ind. Cas. 277 (279); 11 C.L.J. 612=6 Ind. Cas. 457; 15 Ind. Cas. 832=5 S.L.R. 260; 15 M.C.C.R. 77 (80); 21 P.R. 1905=132 P.L.R. 1905; 44 P.R. 1904.]

THIS was a reference to the High Court by the Collector of Bombay, under s. 15 of the Land Acquisition Act X of 1870, for the purpose of fixing the amount of compensation to be paid to the owner of certain land taken up by Government for public purposes. The Collector had fixed the rate of compensation at five rupees per square yard, but the owner refused to accept that amount as being altogether inadequate.

The matter came on for hearing before Farran, J., and two Assessors (Mr. E. W. Flower and Mr. J. Cambell), on the 14th August 1890 and following days.

Latham (Advocate-General) and *Lang*, for Government.
Inverarity and *Anderson*, for the claimant, Munji Khetsey.

JUDGMENT.

FARRAN, J.—The question at present for determination is the amount of compensation to be awarded for the land which the Collector in this case has taken up for public purposes. The land in question is situated at the junction of the Parel and Chinchpokli roads, and is the corner plot between these. It comprises 2,209 square yards, has a frontage in the Parel Road of 200 feet, and a mean depth eastward from that road of 120 feet; on the Chinchpokli Road it has a frontage of 160 feet, and a mean depth from that road of 160 feet northwards. The land has been acquired for the purpose of enabling the Municipal Corporation to erect a fire-engine station upon it, and the Corporation will eventually have to pay for the land, though they are [281] not nominally parties to these proceedings. It was taken up in pursuance of a Government notification which appeared in the *Gazette* of the 5th July, 1888, and actual possession of it was taken on the 20th September following. As the whole plot of land was acquired, no compensation for severance, or damages by reason of the acquisition injuriously affecting his other property, are claimed by the owner; and the only point the Court has to consider is, under s. 24, cl. 1 of the Act, "the market value, at the time of awarding compensation, of such land."

The Collector is willing to give Rs. 5 per square yard for the land, but did not tender the amount, as no one attended at his office pursuant to his notice. The claimant states that that amount is altogether inadequate; that the land is quite exceptionally favourably situated, having a frontage on two important roads; and that the value of land in this neighbourhood is rapidly rising every day. He claims at the rate of Rs. 26 per square yard.

In support of the value put upon the land by the Collector, Government rely upon the fact, that during the past five years or so, numerous set-backs for the purpose of improving and widening the Parel Road have been made upon it, and that the Municipality have acquired land from the adjoining owners for this purpose. The price paid for the land so

acquired has been paid nearly uniformly at the rate of Rs. 5 per square yard, and has been arrived at by agreement with the owners. In one case, where the owner would not agree with the Municipality as to the rate for his land, the Chief Presidency Magistrate awarded him Rs. 2-12-0 per square yard. This land was on the Chinchpokli Road and very close to the land in question. It was contended by Mr. Inverarity, and I think rightly, that this award is not evidence as to the market value of the land. The Magistrate's award does not fall within the class of judgments which, under ss. 41 and 42 of the Evidence Act, are admissible in evidence.

Though the rate of Rs. 5 for the set-backs in the Parel Road has been agreed to by the owners of land which has been taken for widening it, I do not think that rate a fair test of the market price of such land. The rate seems to have been adopted before or in the year 1885, and the landowners have been induced to [282] acquiesce in it ever since partly by judicious pressure, partly by persuasion, and concession on the part of the Municipality in other matters, and chiefly by the feeling that a precedent has been established which it is not worth their while, and would be invidious on their part as public-spirited citizens, to resist. The evidence shows that it is only the land immediately adjoining and having a frontage on the road which is of particular value. The land behind that is in abundance and of comparatively little value. The taking away of valuable land in the front renders valuable an equal portion of comparatively valueless land in the rear. The result is, of course, different in the crowded city. Each yard of land taken there is *pro tanto* an absolute loss to the owners. Hence their objection to the process and an obstinate determination not to accept less for the land taken than its utmost value. This rate of Rs. 5 is only useful, therefore, as showing that the Municipal authorities considered it a fair rate for land on the Parel Road in 1885, and not as fixing its later, or present, market value.

The claimants, in support of their contention, rely (*inter alia*) upon an arithmetical calculation of the value of the land based upon the rental which the owners of land in the vicinity receive from the *challs* or other buildings upon it. Mr. Raghunath Mukund, C.E., Architect and Surveyor, has demonstrated apparently to his own satisfaction, that upon this basis the land in question is worth Rs. 26 per square yard. When we have before the Court evidence of actual purchases and sales of land in the vicinity, in none of which does the actual price given even remotely approximate to that figure, it is plain that there must be something intrinsically unsound in the calculation or its basis. It would be easy to point out wherein this unsoundness consists. It is unnecessary, however, to do so, for this method of arriving at the value of land has not been adopted by the Court. The recognized modes are : 1. If a part or parts of the land taken up has or have been previously sold, such sales are taken as a fair basis upon which, making all proper allowances for situation, &c., to determine the value of that taken. 2. To ascertain the net annual income of the land [283] and to deduce its value by allowing a certain number of years' purchase of such income, according to the nature of the property. 3. To find out the prices at which lands in the vicinity have been sold and purchased, and making all due allowance for situation, to deduce from such sales the price which the land in question would probably fetch if offered for sale to the public.

In the present case, there is no evidence of the purchase and sale of the land itself, or any part of it, sufficiently recent to enable the Court to

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adopt the first method of valuation, and in this instance it would be unfair to adopt the second. The land, before it was taken by the Collector, had been let by the *kathi*, (a local measure which, I believe, varies, and in this case is 20 by 25 feet), at Rs. 3 per *kathi* per mensem. It was not fully let, and brought in only an income of Rs. 34 per mensem. The evidence of Jan Mahomed Cassum shows that this income could have been readily raised; and I consider that, in a neighbourhood in the vicinity of a town where building is going on, it would be unjust to apply the second criterion if there is a fair probability of the owner being able, owing to its situation, to sell or lease his land for building purposes. The value of land should be determined, not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner can dispose of it; that is, lay it out for sale—*Premchand v. The Collector of Calcutta* (1). *The Collector of Poona v. Kashinath Khasgiwala* (2).

There is sufficient evidence before the Court to enable it to arrive at the market value of the land within a reasonable degree of certainty, and so to justify it in adopting the third basis of valuation. My assessor, Mr. Flower, agrees that, under the circumstances, it is the fairest one to have recourse to. As I have already observed, land in this locality derives its value from having a frontage on the important main roads, and especially on the Parel Road, which is the main artery of traffic between Bombay proper and its outlying villages, and Salsette and the Mofussil, the Chinchpokli Road being also an important one. Hence we may discard from our consideration purchases like [284] that of the Great Eastern Spinning and Weaving Company, Limited, of 31,000 square yards for Rs. 27,500 in the Kala Chauki Road, and of N. N. Wadia of 3,294 square yards for Rs. 3,294, behind his own land in Parel Road. These were purchases in 1887. Lands purchased by mills in the immediate vicinity of their own existing mills, and to enlarge them, are also, or may be, a misleading guide. The owner is able to make his own terms within reasonable limits. The City of Bombay Manufacturing Company bought such lands on or near the Chinchpokli Road in 1887 at Rs. 4 per square yard, in 1888 at Rs. 4-4, and in 1889 at Rs. 5, for the same quantity; while the Bombay Cotton Company paid Rs. 7 for 10,000 square yards on the Kala Chauki Road, &c.

In 1886, the Tramway Company had purchased the main site of their stables and car-shed for Rs. 6-14-4, including the buildings then on the land, which were of some considerable value. This last-mentioned purchase I take as the starting-point of my valuation. They purchased 7,260 square yards for Rs. 50,000. Taking roughly the value of the buildings at Rs. 10,000 (Mr. Rimington thinks that the materials should be about Rs. 5,000), the land was purchased at between Rs. 5 and 6 per square yard, and shows that Rs. 5 fixed by the Municipal Corporation about this time as the amount to be allowed for set-back land was not unreasonable. [His lordship then quoted several instances of purchases and sales of lands between the years 1886 and 1888, of which evidence had been given.]

The result gives the price of building land in the Parel Road in 1888 from Rs. 8 to Rs. 9 per square yard according to position. The demand for land in this locality fell off apparently in 1889. There is no evidence of any transaction in that year. I am assured, however, by my assessors

(1) 2 C. 103.

(2) 10 B. 585.

that there has been no material fall in prices. In 1890, the Municipality succeeded in purchasing Ruttonbai's land, just north of that of Tapidas Varajdas, for a sum which, with filling, will amount to about Rs. 4-8 per square yard. Having regard to the great depth of land from the road, only a small portion of it can be described as building land, and the Municipal Commissioner, besides, seems to have [286] made an advantageous agreement. Tapidas Varajdas's sons held out for a larger price, but their land also is of considerable depth.

There is one purchase made in 1890 which I regard as of utmost importance. Memon Haji Noormahomed sold a plot of land immediately adjoining the land in question to Memon Haji R. Sulleman, and conveyed it to the latter on the 19th March, 1890. The agreement to purchase was made in 1888. This plot is to the east of the land taken up by the Municipal Commissioner, and is divided from it by only a passage. The price was Rs. 8,000 for 1,023 square yards, but there was a building on it of the value of Rs. 800. This makes the price of the land, as nearly as possible, Rs. 7 per square yard. If it be the case that land has not fallen in price since 1888, or if the time for computing the value is the time of the Collector's taking possession and valuing the land, this seems to fix the value of the portion of this land, which fronts on the Chinchpokli Road, at Rs. 7 per square yard. My assessor, Mr. Flower, thinks that a higher value should be given for that portion of the land which fronts on the Parel Road, and that this latter value cannot be taken at less than Rs. 9 persquare yard. Having regard to the fact that the land in question is a corner plot, on which Mr. Campbell lays particular stress, and is very favourably situated at the junction of the two important thoroughfares, and that it is of convenient shape, I agree in determining its market value at Rs. 8 per square yard—that is to say, half at Rs. 9, facing Parel Road, and half at Rs. 7, fronting the Chinchpokli Road.

Having regard to the cessation of purchases and sales in this Parel Road since 1888, I should have felt inclined to consider that land has fallen in value since that year, but I readily yield my theoretical opinion to the practical knowledge of my assessors. Were it otherwise, I should have had to determine whether compensation should be allowed at the present market rates or at those prevailing in 1888. I may, however, say that I see no reason for dissenting from the opinion expressed by the appellate Court in *Ahmedbhoy Hubibhoy v. The Collector of Tanna* (1). [286] The market value at the time of awarding compensation may fairly be taken to mean "at the time when proceedings under the Act are taken," as opposed to its known market value in the past and its probable market value in the future; otherwise in the same proceeding there might be three different values determined—the value at the time the Collector awards; the value at the time the Division Bench awards; and the value at the time the appellate Court awards.

The total value of the land taken from the claimant was calculated to amount to Rs. 17,672, and Rs. 2,650-12-9 were awarded him as compensation at the rate of 15 per cent. for compulsory acquisition, making a total of Rs. 20, 322-12-9. An award for this amount was made in favour of the claimant, with the costs of the reference, and interest from the date of taking possession.

Attorney for the Collector:—Mr. Little, Government Solicitor.

Attorneys for the Claimants:—Messrs. Chinis, Motilal and Malvi.