BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY ..... PLAINTIFF;

1965
Mar. 8-12, 15, 16.
Apr. 14

AND

THE DIRECTOR, THE VETERANS' LAND ACT and MURRAY BERNARD GRENN ..... DEFENDANTS.

Expropriation—Compensation—Method of establishing value of expropriated property—Determination of value of property at date of expropriation—Valuation of land remaining after expropriation—Special value of expropriated land to former owner—Interest on amount of compensation.

This action arises from the expropriation in 1963 by the plaintiff of about 10.5 acres of a 28.5 acre parcel of land consisting of part of the west half of lot 8, concession 5 in the Township of Scarborough, County of York, on the outskirts of the City of Toronto, which had been acquired by the defendant Grenn, in 1947. At the time of trial there was about $1,885 00 owing by Grenn to his co-defendant, The Director, The Veterans' Land Act, under an agreement entered into between the defendants in 1949. This is the extent of the Director's interest in the land.

Prior to 1963 the defendant, Grenn, had cleared the land and had used part of it for market gardening and had raised turkeys on part of it for several years. He had also constructed a substantial residence and several other buildings, most of which were intended to be used in connection with his turkey-raising operations.

The 28 5 acre tract owned by the defendants was rectangular in shape, being some 1850 feet from north to south and 670 feet from east to west. The plaintiff expropriated the northerly 10.5 acres thereof, upon which were located most of the buildings including the defendant, Grenn's, residence.

The evidence established that the defendant, Grenn, intended to use the tract of land for a horse boarding project with the assistance of his son

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who had graduated as a veterinary surgeon, and to continue his market gardening and resume his turkey raising, which he had abandoned in 1956.

Held: That it is well established that the value of expropriated property should be estimated on the basis of the most advantageous use that could be made of it, whether present or future, but it must be remembered that, while consideration must be given to the future advantages and potentialities of the property, it is only the present value as at the date of expropriation of such advantages and possibilities that falls to be determined.

2. That with respect to damage to the property remaining to the defendant after expropriation, there would be no detriment if the land were used for agricultural purposes, there being no severance or restriction of access, although there would most certainly be some detrimental effect for residential purposes. However, in view of the uncertainty and remoteness of any higher use in the future, the "after" valuation of the land should remain the same as the "before" valuation and such valuation should include the prospect of any potential higher use. For similar reasons no benefit should be assessed which could be conferred upon the land by the presence of the railroad.

3. That the property in question had a special value to the defendant, Grenn, because of its location with respect to three major race tracks and the adaptability of the existing buildings for the purpose of the very special type of horse boarding which the defendant and his son had realistically and seriously considered and towards the realization of which tentative steps had been taken prior to the expropriation.

4. That the defendant is not entitled to interest on the amount of compensation for the period of time he remained in possession of the expropriated property without payment of rent following its expropriation, but is entitled to interest at the rate of five per cent per annum from the date on which he gave possession thereof to the plaintiff to the date of judgment.

ACTION to have the amount of compensation payable to defendants determined by the Court.

The action was tried by the Honourable Mr. Justice Cattanach at Toronto.

W. P. Winslow for plaintiff.

J. D. Arnup, Q.C. for defendant Grenn.

The facts and questions of law raised are stated in the reasons for judgment.

CATTANACH J. now (April 14, 1965) delivered the following judgment:

The information exhibited herein shows that a portion of the lands described in paragraph 2 thereof registered in the

name of the defendant, the Director, The Veterans' Land Act (hereinafter referred to as The Director) with whom the defendant, Murray Bernard Grenn, a qualified war veteran had entered into an agreement to purchase the said lands, were taken by the plaintiff for the purposes of a railway facility to be constructed by it by deposit of a plan of expropriation on March 11, 1963 pursuant to the *Canadian National Railways Act,* Chapter 29, Statutes of Canada, 1955 and amendments thereto and the *Expropriation Act,* Chapter 106, Revised Statutes of Canada 1952. The prior consent to the said expropriation by the Governor General in Council pursuant to subsection 1, section 24A of the *Veteran's Land Act,* Chapter 280, R.S.C. 1952, as amended by Chapter 37, Statutes of Canada 1959 was obtained and is evidenced by Order-in-Council P.C. 1963-298 dated February 21, 1963.

Therefore, as of March 11, 1963 the aforesaid lands became vested in the plaintiff and the defendants ceased to have any right, title or interest therein or thereto and the defendants' rights are limited to receiving compensation therefor in accordance with their several interests in the lands so expropriated.

The plaintiff, prior to expropriation and on occasions thereafter offered to pay to the defendants the aggregate sum of $93,200 in full satisfaction of all their claims for the lands taken as well as all other consequential damage. The Director was prepared to accept that offer but the other defendant, Murray Bernard Grenn, refused and by his reply claims that the lands, buildings and appurtenances thereto which had been expropriated by the plaintiff had a value of $150,000. It was agreed between the parties that the offer of $93,200 was made to the defendant Grenn on May 3, 1963.

It has been agreed among the parties that the interest of the Director is limited to the amount owing to him under the agreement for sale between him and the defendant, Murray Bernard Grenn which amount is agreed to be $1,885.87 as at December 1, 1964.

The contest is therefore, between the plaintiff and the defendant Grenn. There is thus a wide divergence between these parties as to the amount of compensation money to which the defendant, Grenn is entitled and these proceedings are brought for an adjudication thereof. Hereinafter

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when reference is made to the defendant it will mean the defendant, Murray Bernard Grenn.

The defendant, who is now sixty years of age came to Canada at the age of nineteen from the Ukraine, where he was raised on a farm. He worked as a farm labourer in the wheat fields of Alberta until 1928 when, upon his marriage, he began the operation of a country general store. This venture proved unsuccessful due primarily to the disastrous depression of 1929, during which year he went broke. He thereupon became a life insurance salesman in Vancouver, B.C. and in addition obtained part-time work in a retail store.

At the outbreak of war in 1939 he promptly enlisted and served until 1942 when he was honourably discharged on medical grounds. He had taken his discharge in Toronto, Ontario and obtained employment in war industries until 1944 when he again entered into retail trade, this time in Toronto. This retail venture apparently prospered because during the period between 1944 and 1952 he acquired four retail stores.

However, he stated in evidence that his most cherished ambition had always been to return to life on a farm because of his affinity for animals, particularly horses. In this professed ambition or dream, I believe there is a modicum of truth, despite his more extensive experience in the retail trade, because he enrolled his son in the Agricultural College at Guelph to study and qualify as a veterinary surgeon.

In 1947 he acquired a rectangular tract of land being the west half of Lot 8, concession 5, in the Township of Scarborough, County of York in the Province of Ontario, containing by admeasurement approximately 28.5 acres, excepting the most northerly 358 feet thereof for a consideration of $2,000. The property is located at the extreme North East limit of the Metropolitan Toronto planning area and about 15.5 miles from downtown Toronto. It is an area that is predominately agricultural in use, with some golf courses, riding stables and rural housing scattered throughout. The northern boundary of the property runs for 670 feet, 358 feet south of and parallel to Steeles Avenue which is an east-west traffic artery surfaced with gravel and constitutes the northern boundary of Metropolitan Toronto.

The western boundary is Sewells Road on which the property has a frontage of 1850 feet. The southern and western boundaries do not front on any access roads.

The land when acquired by the defendant was devoid of buildings and in a run-down state having been abandoned for some years previous. Immediately upon his acquisition of the land the defendant began clearing it up by removing stumps and boulders which took about two to three years and the combined labour of the defendant himself and two hired men.

In 1949, the defendant, in order to take advantage of his war service gratuities entered into an arrangement with the Director, Veterans' Land Act whereby title passed to the Director under the usual agreement. The cost of the land to the Director was $5,400 and to the defendant $4,140, to be repaid by him to the Director over a period of twenty-five years.

In this year the defendant began market gardening on the land so acquired starting first upon a one acre plot which was gradually increased so that eventually he had from eight to ten acres under cultivation.

From 1953 to 1956 the defendant was engaged in raising turkeys although he supplemented that activity by continuing his market gardening operation.

In 1949 the defendant decided to dispose of the four retail stores he owned in the City of Toronto and devote himself exclusively to his farming activities.

Accordingly, he began the construction of a house on the farm land in 1949, moved into it with his family in 1951 although construction was not finally completed until 1952. Also in late 1952 or early 1953 he disposed of the last of his four retail stores.

The residence built by the defendant was of substantial proportions and good quality construction. It was designed and built to his specifications upon a concrete slab with radiant heating and consisted of four bedrooms, a large living-room opening through French doors onto a patio, a large reception hall, dining-room, an above average sized kitchen, an office, a utility room and two bathrooms. Also attached to the house and forming an integral part thereof was an apartment for use by hired help, usually a man and

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his wife. This apartment consisted of three rooms and a bath. There was also a two-car garage as well as a storage room, laundry and utility room.

Next constructed by the defendant was a concrete block story and a half storage building with a cinder block floor. The dimensions of this building were approximately 32 feet by 56 feet and it consisted of two sections, a stable area and a loft. The defendant stated this building was completed in 1953 or 1954 his recollection not being definite.

Upon the defendant's decision to raise turkeys he built a large single story turkey house, 56 feet, 6 inches in width and 208 feet in length divided into six sections of equal size being 32 feet by 56 feet, 6 inches, with a centre section of 16 feet in width and incorporating a pump house. This building was of block construction upon a concrete block foundation with a cement floor running the entire length of the building and covering the centre portion. It was covered by an aluminum roof. The defendant stated that this building was completed in 1954.

During either 1955 or 1956, according to the defendant's recollection, he completed construction of a pole turkey shed, 24 feet, 6 inches by 206 feet built by the use of cedar posts, with open sides to permit the turkeys to run, but which could be enclosed by the use of plywood panels which were designed and of the size for that purpose. This building was covered by a corrugated metal roof.

A similar shed of approximately the same proportions and construction was built in 1958, but was not roofed.

The defendant had contemplated building a swimming pool and had done the necessary excavation when he decided that a combined cottage and greenhouse would be more useful, which he built on the existing foundation. The cottage was 17 feet, 6 inches by 26 feet of frame construction covered with asbestos sheathing. The attached greenhouse was 12 feet, 5 inches by 17 feet, 6 inches. The cottage was for use by unmarried hired help and the greenhouse was for use in connection with the defendant's market gardening. The cottage was fit for occupancy and substantially completed in 1954 but was never fully finished inside.

Because of theft of turkeys the defendant built a frame shelter for use by a night watchman as well as eight small doghouses.

All of these buildings were constructed under the supervision of the defendant. He hired the labour and tradesmen required and purchased the building materials. Where necessary he consulted an architect and paid for the drawing of working plans. This was certainly done in connection with the residence although the evidence is not specific with respect to other buildings. In short the defendant acted as his own general contractor.

The plaintiff's plans for the construction of a large and complex freight marshalling yard north of Metropolitan Toronto necessitated the construction of an access line, the right of way for which would transverse the defendant's property diagonally.

The plaintiff's original plan had been to expropriate only sufficient of the defendant's property for the right of way which would be a strip 120 feet wide and which would sever the defendant's property into two parcels, but passing directly through and necessitating the demolition of his residence while the other buildings would remain intact. The defendant's son, Dr. Harvey Grenn was advised to this effect by a letter dated March 24, 1959 and I am positive that the content of such letter was communicated to the defendant forthwith upon its receipt.

Subsequently the plaintiff decided to expropriate the whole of that portion of the defendant's property lying north of the right of way consisting of 10.537 acres upon which all of the defendant's buildings had been erected, leaving in the defendant's possession the portion of the property to the south of the right of way consisting of 17.963 acres.

As mentioned before from 1949 to 1953 the defendant was engaged in market gardening exclusively upon the property. From 1953 to 1956 he became engaged in raising turkeys which then became his main enterprise. The defendant testified that his annual net from market gardening was consistently less than $2,000 and that his annual net from turkeys during 1953 to 1956 was about $5,000. However, I am of the opinion that the foregoing estimate of the defendant's net return from both these enterprises is excessive. He also testified that he filed no income tax returns respecting his farming activities because his income therefrom was less than his statutory exemptions of $2,000.

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In 1956 he lost his entire turkey crop. Previously he had raised and marketed about 5,000 poults per year but in 1956 he doubled the number of poults to 10,000 presumably at the suggestion of his feed supplier. Because he could not market this larger number of birds through his normal channels the entire flock was processed and kept frozen in a processing plant at Brampton, Ontario on the recommendation of his feed supplier. The processor unlawfully converted the defendant's birds to its own use. The defendant sued the processor and recovered judgment in the amount of $47,928.85 of which $5,000 was awarded as exemplary damages. The defendant's loss was calculated according to the highest average wholesale prices prevailing during the year which would amount to $42,928.85. The defendant had lost about 1,500 poults because the feed recommended and supplied to him was too high in protein count. The feed supplier sued the defendant for feed supplied and recovered judgment in the amount of $40,000. The cost of the poults was $1.00 per poult in addition to which there was a cost of between 10 to 20 cents per poult for heating and between $500 to $800 for litter. The defendant also employed two and sometimes three men to care for the turkeys at $200 per month per man. In view of such costs it seems inconceivable to me that the defendant could have netted between $5,000 and $7,000 from his turkey raising as he testified, even when he conducted the operation on a lesser scale and even bearing in mind the spread between retail and wholesale prices.

After the defendant's disastrous experience in turkey raising in 1956 the germ of an idea which the defendant and his son were considering took fruit. This idea was that the premises should be converted to use for horse boarding. His son would practise as a veterinary surgeon there. During his course the defendant's son had a classmate, who was the son of a horse breeder and trainer through whom he had made or hoped to make the acquaintance of other horse trainers and owners. The defendant's property was located in close proximity to three major race tracks in the Toronto area all of which were within easy access of the defendant's property over good roads. There was a veterinarian who had conducted a similar enterprise with success in the immediate vicinity but who had moved his practice elsewhere. The defendant's son was due to graduate and did graduate in

1958. In that year the son lived at home and obtained employment with another veterinarian to gain experience. He also visited Lexington, Kentucky to see the progress in equine veterinary care in the heart of the horse racing country and spent some time assisting his classmate whose duties as a veterinarian took him to the local race tracks.

The defendant foresaw a lucrative venture. He planned to continue market gardening and to resume turkey raising, which he had abandoned in 1956, but on a reduced scale. The large poultry barn was to be converted into stables and the turkey raising moved to the covered pole shed. Considerable reconstruction would be required to convert these buildings to such uses. He optimistically estimated a prospective net return of $7,000 from boarding horses and $3,000 from raising turkeys. His son's income was to be derived from his profession. There was to be an inside operating room within the converted poultry barn and an outside operating area adjacent thereto with hydraulic operating tables, exercise yards, paddocks and the like facilities. The existing buildings and land were readily adaptable for these purposes.

Their target date for the commencement of this venture was set for 1959.

When the defendant and his son were advised of the impending expropriation by the plaintiff in March of 1959 this horse boarding project was ruined. Tentative steps had been taken towards the fulfillment thereof. A pond to ensure an adequate water supply had been dug on that portion of the property which was not expropriated, the poultry barn had been cleared in contemplation of reconstruction and some cultivating and planting had been done to prepare for an exercise yard and a paddock. Quite naturally when rumours of the impending expropriation became a certainty, all such preparatory activities were abruptly ceased.

Subsequently, the defendant's son's classmate began a similar horse breeding, stabling and caring business which has been attended by some success but whether the defendant and his son would have been equally successful is problematical.

Simultaneously with the son's conduct of his equine veterinary practice on the expropriation property it was also

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planned that he should conduct a small animal hospital in the nearby village of Agincourt. The lot upon which the building to house the small animal hospital to be constructed was purchased by the defendant in the fall 1958. This animal hospital was opened in September of 1960. The son testified that he made unsuccessful efforts to find an alternative site for a large animal hospital.

By letters patent dated June 24, 1958, issued pursuant to the laws of the Province of Ontario, a company was incorporated under the name of Grenn Limited following application therefor by the defendant presumably upon the advice of his solicitor. The authorized capital consisted of $200,000 divided into 18,000 non-voting preference shares of the par value of $10 each and 20,000 common shares of the par value of $1 each.

By an agreement between the defendant and the company dated June 26, 1958 the defendant, as vendor, purported to sell to the company all his goods, equipment, implements and buildings in consideration of 8,251 fully paid non-voting preference shares of the company. In the schedule appended to the agreement, the buildings were valued at $75,000. Subsection 2 of section 31 of the *Ontario Corporations Act* 1953 S. of O. Ch. 19 provides that shares with par value shall not be issued and allotted as fully paid except for a consideration in cash equal to the par value thereof or for a consideration in property being the fair equivalent of such cash consideration so determined by the directors in good faith by express resolution.

The defendant also purchased 25,000 common shares for cash. Apparently he held all issued shares other than qualifying shares and regarded and treated the company simply as his alter ego. It was the defendant's intention that his business should be conducted through this corporate medium thereby obtaining whatever corporate benefits that might result.

On April 11, 1961 the buildings were transferred back to the defendant by the expedient of redeeming the 7,500 preference shares held by him. The consideration for the transfer back therefore remained at $75,000.

The equipment originally transferred to the company by the defendant in consideration of preference shares valued

at $7,510 was not transferred back from the company to the defendant.

Upon the expropriation becoming effective March 11, 1963, the plaintiff permitted the defendant to remain in possession until June 19, 1963 when the defendant delivered the keys to the house to the plaintiff. It is agreed between the parties that this is the date upon which possession was surrendered, although the defendant moved from the house into other accommodation in October 1962 during which interval the house was unoccupied. The plaintiff permitted the defendant to store some of his personal effects and farming equipment in the story and a half concrete block building which is the only building which has not been demolished.

Further, on May 6, 1963 the sum of $3,000 was advanced by the plaintiff to the defendant to defray his moving expenses on the agreement that $3,000 should be credited against the compensation found to be payable to the defendant.

There was filed in evidence:

(1) a certified copy of the Township of Scarborough official plan passed by the Township Council on April 11, 1957 and approved by the Minister of Planning and Development on December 18, 1957 which was not amended as at March 11, 1963 (Exhibit 13);

(2) a certified copy of the Township of Scarborough urban development by-law No. 3861 passed on April 5, 1948 and approved by the Minister on April 16, 1948 which has not been amended as at March 11, 1963 (Exhibit 14) and

(3) a certified copy of the Township of Scarborough zoning by-law No. 10217 passed on November 20, 1961 and which to become effective must be approved by the Ontario Municipal Board and has not been so approved. (Exhibit 11).

The defendant's property is not served by water-mains or sewers and it is evident from the above mentioned documents that urban development of the area in which the defendant's property lies is not contemplated until after

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1980 and that the defendant's property is in an area designated for agricultural use which term is defined in sufficiently broad terms to include the use contemplated by the defendant. The Township Planning Board is authorized to consent to separation of lands for non-farm homes, in accordance with the *Ontario Planning Act* but such separations are not to be encouraged in agricultural areas and not in parcels of less than 10 acres and each home is to be upon a lot of 100 foot frontage on a public road and at least 300 feet in depth.

Against such background, as I have intimated before, the sole dispute is between the plaintiff and the defendant as to the amount of compensation to which the defendant is entitled.

Opinion evidence of the value of the expropriated property was given for the defendant, by the defendant himself, Mr. James E. Farr and Mr. R. W. Hope and for the plaintiff by Mr. Frank Helyar, Mr. G. I. M. Young and Mr. Joseph Strung. Mr. Farr's testimony was directed to expressing his opinion to the value of the land as vacant land before and after expropriation while Mr. Hope gave his opinion of the reconstruction costs of the buildings expropriated and the depreciated value thereof. Messrs. Young and Strung gave their opinions as to the value of the land before and after expropriation. Mr. Helyar gave his opinion as to the reconstruction cost of the buildings. Messrs. Young and Strung accepted Mr. Helyar's opinion of the reconstruction cost and applied their respective opinions to the depreciation thereto. The defendant himself expressed no opinion as to the value of the land as such. The results were surprisingly divergent. I attribute the divergence as to the value of the land among the experts to differing opinions as to the best use to which the property could have been put. It is well established that the value of expropriated property should be estimated on the basis of the most advantageous use that could be made of it, whether present or future, but it must be remembered that, while consideration must be given to the future advantages and potentialities of the property, it is only the present value as at the date of expropriation of such advantages and possibilities that falls to be determined.

Mr. Farr based his valuation on the future use of the property as a rural residential development while Messrs. Young and Strung considered such use as conjectural and remote and accordingly concluded the best use as being agricultural holding, i.e. devoting the land to some agricultural use such as the defendant had done and had in contemplation against future urban development. In their views, with which I agree, the current market price would reflect that potentiality.

To determine market value all three experts resorted to sales and listings of sales of other land in the same general area and there was no concrete evidence available to them about such transactions except what could be learned from examining deeds in the Registry Office and viewing the properties. It was accepted by all three experts that none of the sales upon which they relied were truly or exactly comparable.

Mr. Farr concluded that the expropriated property should be valued at $2,000 per acre before expropriation and $1,550 thereafter. The reduced value after expropriation he attributed to the presence of the railway with its heavy traffic which would injuriously affect the defendant's remaining land for rural residential development as would the irregular shape thereof.

Mr. Young valued the expropriated property at $1,500 per acre before expropriation and Mr. Strung placed his valuation at $1,300 per acre. Both Mr. Young and Mr. Strung were of the opinion that the coming of the railroad would not reduce the value of the land and accordingly their after valuations remained respectively at $1,500 and $1,300 per acre.

After careful consideration of all sales relied upon by the experts and the many imponderables attaching thereto, I cannot conclude therefrom that there was justification of Mr. Farr's "before" valuation of $2,000 per acre. There was only one sale in excess of $2,000 per acre and that was at $2,030 per acre for land that was susceptible of earlier development than the defendant's property.

In the circumstances, therefore, and having regard to the onus which is on the defendant, I cannot make a finding that the defendant's land, before expropriation, was worth

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any more than the higher of the two values put forward by the plaintiff, i.e. $1,500 per acre.

With respect to damage to the property remaining to the defendant after expropriation, there would be no detriment if the land were used for agricultural purposes there being no severance or restrictions of access, although there would most certainly be some detrimental effect for residential purposes. However, in view of the uncertainty and remoteness of any higher use in the future I accept the opinion of Messrs. Young and Strung that the "after" valuation of the land should remain the same as the "before" valuation and that such valuation would include the prospect of any potential higher use. For similar reasons I would not assess any benefit which could be conferred upon the land by the presence of the railroad.

Therefore, I would find the compensation to which the defendant is entitled in respect of his land to be in the amount of $15,805.50.

There remains to be considered next the value of the improvements to the land made by the defendant to be followed by a consideration of the depreciated value thereof as at March 11, 1963.

The defendant himself testified that the approximate cost of the structures and improvements was $111,080 including therein the cost of landscaping, roads and farm clean-up but exclusive of his own labour. This estimate is based upon his recollection and is not supported by any accounts which, if they existed, were destroyed when the vacant house on the expropriated land was rifled. In my view it is only natural that the defendant would be inclined to err upon the side beneficial to himself and accordingly I find this estimate to be excessive.

Mr. Hope began working as a carpenter and eventually became successively an estimator, manager and third owner of a successful general contracting company specializing in alterations and repairs, fire repairs and new construction with an annual volume of $1,250,000. He is also the manager of an appraisal company specializing in the appraisal of fire losses, the cost of reconstruction and in estimating depreciation. Mr. Hope had the advantage of inspecting the buildings during April 1963. Also he was given the actual construction plans of the house and the

plan of the radiant heating layout. In making his estimate of the replacement costs he used a unit figure inclusive of the cost of material, labour, overhead and profit that is the identical unit price which he uses in making competitive bids. His resultant estimate of replacement costs of the buildings and improvements was $92,077.00 the particulars of which are outlined in a report prepared by him and filed in evidence as Exhibit "Q".

Mr. Helyar, a quantity surveyor, estimated the reconstruction costs on behalf of the plaintiff. Mr. Helyar did not have the advantage of inspecting the buildings and improvements nor did he have available to him the construction plans of the house or of the radiant heating layout. He was obliged to make his estimate from numerous photographs of the buildings, both exterior and interior, a description thereof supplied to him by Mr. Strung and a floor plan of the house drawn by Mr. Strung. Mr. Helyar took the measurements, figured the materials required and based on unit prices current in March 11, 1963, but exclusive of contractor's overhead and profit for which he assigned specific amounts, from which computations he arrived at an estimated reconstruction cost of $66,934. During the trial the construction plans of the house and radiant heating layout were made available to Mr. Helyar who accordingly raised his estimate upward to $69,614, a difference of $2,680 over his former estimate of the reconstruction cost of the house. The overall difference between the respective estimate of Mr. Hope and Mr. Helyar is $23,463.

Mr. Helyar in his estimate did not include landscaping, sodding, culverts and the watchman's shed which were included in Mr. Hope's estimate at $5,468 which would reduce the difference between them to about $18,000. Mr. Helyar and Mr. Hope were extremely close in their estimate of the reconstruction costs of all buildings except the main house, that difference being between Mr. Hope's figure of $54,192 and Mr. Helyar's of $36,043 which is approximate to their overall difference of $18,000.

The principal difference between them is with respect to the item of carpentry in the main house being $8,623. As mentioned before, in fixing his unit price, Mr. Helyar did not include the contractor's overhead and profit, but included these as separate items. Further in arriving at his labour

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costs, Mr. Helyar did so on the basis of non union labour being employed.

In view of Mr. Hope's obvious advantages in being able to inspect the buildings and premises and because of his experience in making competitive bids his estimate of the reconstruction cost appears to me to be more realistic and accurate. I, therefore, accept the reconstruction cost put forward by him in the amount of $92,077.

My next task is to find the depreciated value of the improvements.

Mr. Young and Mr. Strung, for the plaintiff, both accepted Mr. Helyar's estimate of reconstruction costs and applied thereto percentage rates of depreciation to arrive at the depreciated value. Mr. Young applied a rate of twenty-five percent to all buildings except the cottage and greenhouse, and open pole turkey shed which were unfinished and to which two buildings he applied no depreciation. Mr. Strung applied twenty-five percent to the house, ten percent to the cottage and greenhouse, thirty-three percent to the story and a half concrete block building and the poultry barn and fifty percent to the turkey sheds. They both arrived at these percentage rates basically upon the life expectancy of the buildings and deducting the actual age as well as considering their state of repair.

Mr. Hope, for the defendant, also estimated the depreciated value of the buildings. In doing so he employed two methods, the first method being an overall depreciation rate based upon the life expectancy of the buildings. Mr. Hope assigned a much longer life expectancy than either Mr. Young or Mr. Strung and came up with percentage rates ranging from a minimum of five percent to a maximum of sixteen percent, indicated by a summary prepared by him and filed in evidence as Exhibit "R". He also computed the depreciated value by a second method which involved an estimate of the expected life of the component parts of the buildings assigning a depreciation rate applied to the actual age and condition.

By the first method Mr. Hope arrived at a depreciated value of $81,389 and by the second method at a depreciated value of $76,434. However he expressed the view that he preferred his estimate by the first method and that his

second exercise was to check on the accuracy of his first method.

In my view, however, Mr. Hope's second method results in the most accurate and realistic result. In this conclusion I am reinforced by the fact that the defendant himself on June 26, 1958 transferred the buildings to Grenn Limited, some five years previous to March 11, 1963, for a consideration of $75,000 which the directors of Grenn Limited must be presumed to have believed, in good faith, to have been the fair value thereof at that time.

Therefore I find the depreciated value of the buildings and improvements to have been $76,434 as at March 11, 1963.

The depreciated value of the improvements which I have found to be $76,434 when added to the value of the land which I have found to be $15,805.50, amounts to $92,239.50.

The defendant moved from his house to an apartment in the City of Toronto thereby incurring moving expenses. In addition he was obliged to move and store personal effects and farm equipment. He estimates these expenses at $381.73.

In addition the defendant filed a statement of miscellaneous losses as Exhibit "J" in the total amount of $3,150. These losses include fertilizer, piece lumber, a television aerial and such items as he could not dispose of or conveniently remove. Since title thereto would pass to the plaintiff, I therefore feel that this item is properly allowable.

Some of the equipment moved and stored belonged to Grenn Limited. For reimbursement for this expense the defendant should look to Grenn Limited rather than to the plaintiff. However since I have no means of segregating the equipment I think that the defendant would be adequately compensated by an award of $3,500 to cover both of the foregoing items.

In Nichols on Eminent Domain, 2nd edition at page 665 the author says:

> In determining the market value of a piece of real estate for the purposes of a taking by eminent domain, it is not merely the value of the property for the use to which it has been applied by the owner that should be taken into consideration, but the possibility of its use for all purposes present and prospective, for which it is adapted, and to which in reason it might be applied, must be considered, and its value for

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the use to which men of prudence and wisdom and having adequate means would devote the property if owned by them must be taken as the ultimate test.

The rule with respect to ascertaining the proper compensation of an owner where his property is expropriated is stated by Rand, J., in *Diggon-Hibben Ltd. v. The King*[1], in the following words:

> . . . the owner at the moment of expropriation is to be deemed as without title, but all else remaining the same, and the question is what would he, as a prudent man, at that moment, pay for the property rather than be ejected from it.

In *Drew v. The Queen*[2], Locke, J., applying and explaining this principle said:

> An element very often of great importance to be considered in determining what a prudent man would pay for the property rather than be ejected from it is the expense and inconvenience of moving elsewhere, the loss of benefits enjoyed by the owner due to the location of the property taken . . .

Judson, J., in the *Drew case* (*supra*) at pages 632-633 said:

> In fixing an amount of an award there are often factors, other than market value of the property expropriated, which must be taken into account but which are not easily calculated. In such cases the tribunal of fact may decide that compensation can best be appraised in the form of a percentage of the market value. This is but part of the process of determining value to the owner. Once that value has been assessed in accordance with the rule in the Woods case it represents full compensation and the owner is not entitled to an amount for compulsory taking.

In applying the principles so enunciated to the facts in the present case I am convinced that the subject property had a special value to the defendant. The location of the property in close juxtaposition to three major race tracks and the adaptability of the existing buildings, which required an expenditure of funds and which the defendant had available, for the purpose of the very special type of horse boarding, was both feasible and enjoyed a reasonable prospect of success. Further this enterprise would utilize the professional qualifications of the defendant's son and I am certain that the defendant, as a parent, would be most anxious to do so. I am further convinced that this enterprise was realistically and seriously considered for implementation by the defendant and his son. Tentative steps were taken towards realization thereof and I feel that the cessation was due to the impending expropriation.

[1] [1949] S.C.R. 712 at 715. [2] [1961] S.C.R. 614 at 625-6.

Therefore, I find that the property had a special value to the defendant over and above the market value for which he is entitled to compensation and which I would fix at $7,260.50 with the result that the total amount of compensation which I award the defendant is $103,000. From the amount of $103,000 there will be deducted the amount of $3,000 which was advanced by the plaintiff to the defendant on May 6, 1963.

There remains the question of interest. The defendant remained in possession of his former property without payment of any rent until June 19, 1963. Up to this date, in accordance with the settled practice of this Court, he is not entitled to any interest but since that date he is entitled to interest at the rate of five percent per annum on $100,000 to the date of this judgment.

There will, therefore, be judgment declaring that the property described in the Information is vested in the plaintiff as from March 11, 1963; that the amount of compensation payable is in the amount of $100,000 subject to the usual conditions as to all necessary releases and discharges of claims, and with interest thereon at the rate of five percent per annum from June 19, 1963 to the date of this judgment payable to the Director, the Veterans' Land Act in accordance with subsection (3) of section 24A of the *Veterans' Land Act* the surplus to be paid by the Director to the defendant in accordance with section 11 of that Act, and the defendant Grenn is entitled to his costs to be taxed in the usual way. There will be no costs either for or against the Director who did not appear at the trial.