

[1956] N.Z.L.R. 811

**POVERTY BAY CATCHMENT BOARD v. FORGE  
AND OTHERS.**

LAND VALUATION COURT. Gisborne. 1956. July 2, 3, 4; August 3.  
ARCHER J.

*Soil Conservation and Rivers Control—Compensation for Land taken—Land taken when Market Price of Land rising—Duty of Valuer to determine Market Value as at Specified Date—Evidence of Contemporaneous Sales of Nearby Land—Court's Duty in assessing Compensation—Factors depreciating Value of Farm Land—Computation of Interest on Compensation Moneys—Costs—Principle on which Costs allowed—Soil Conservation and Rivers Control Act 1941, s. 145—Finance Act (No. 3) 1944, s. 29 (3)—Statutes Amendment Act 1951, s. 23 (3).*

A valuer valuing a property at some time after "the specified date", as that term is defined in s. 29 (3) of the Finance Act (No. 3) 1944 (as enacted by s. 23 (3) of the Statutes Amendment Act 1951), is entitled to have regard to all relevant facts within his knowledge, including information as to sales subsequent to the specified date for valuation; but he should use that information only for the purpose of determining the market value of the land at that date. Consequently, though a valuer is entitled to make use of the facts disclosed by subsequent sales, he is not entitled to assume that such information was available to buyers or sellers at the specified date.

Evidence of sales of land in close proximity to the land taken at a time near to the specified date is of considerable importance in ascertaining the value of the land taken; and such sales may, in most respects, be reasonably regarded as *bona fide* sales at fair market value.

While the Court is not entitled to be over-generous in the assessment of compensation to a claimant against a local authority, it is the Court's duty to award a sum which will fairly and adequately compensate him for the loss of the land of which he has had to be dispossessed in the public interest.

Interest should be paid upon the compensation moneys awarded, or upon the balance outstanding, from the date when possession of the land was taken (being the date of the Proclamation, unless by agreement possession was taken at some other time), until date of payment; and an order for payment of interest should be made.

*Barber v. Manawatu-Oroua River Board*, [1954] N.Z.L.R. 391, applied.

Costs to be allowed in compensation cases should be fixed by reference to the amount of work reasonably required of counsel, rather than by reference to any scale.

Depreciation on account of such factors as the risk of erosion, the shape and locality of the land, and the accretion of land and its liability to flooding, considered.

APPEALS, in three cases by the Poverty Bay Catchment Board, and in two by the claimants, against the awards of the Gisborne Land Valuation Committee upon claims for compensation arising out of the taking of land in connection with a scheme for straightening and controlling the Waipaoa River. For the purpose of this work the Board had taken under its statutory powers a great many pieces of land in the vicinity of the river, and was faced with a large number of claims for compensation.

Source: McVeagh, J.P. (Ed.). (1967). Land valuation case book. Butterworths, Wellington.



*Cleary and Thorp*, for the appellant Board.

*Woodward*, for Forge.

*Parker*, for Kemp Bros.

*Gillanders Scott*, for Pilmer.

*Cur. adv. vult.*

The judgment of the Court was delivered by

ARCHER J. The three appeals with which we are now concerned are said to be typical claims, and the Board seeks the decision of the Court with a view to assisting it, if possible, to reach a settlement with other claimants. We shall deal with the three claims in their order :

#### FORGE'S CASE

The claimant in this case owned two pieces of land situated some little distance apart, and each having a frontage to the Waipaoa River. From each piece of land a wide strip facing the river was taken by the Board, and as a result the claimant's total holding was reduced from a little over 49 acres to a little less than 28 acres. It was claimed that this reduction rendered the balance of the claimant's holding "uneconomic" for the purpose of agricultural farming, and, in accordance with this view, Mr Forge disposed of the remainder of his land to two separate purchasers shortly after the land subject to his present claim was taken by the Board.

The principal item in Mr Forge's claim was for £300 per acre for 20 ac. 1 ro. 18.2 pp. of land taken. To this were added claims for injurious affection and consequential loss, which increased the total claim to £8,675 12s. 6d. The Committee awarded £5,500 for the land lost, being at the rate of £270 per acre, and £345 upon the subsidiary claims, together with an amount representing interest which will be referred to later.

The Board does not dispute the items included in the award of £345, and the appeal is concerned only with the value of the land taken.

There was no dispute as to the area in question, or as to the "specified date" (as defined in s. 29 (3) of the Finance Act 1944 (as enacted by s. 23 (3) of the Statutes Amendment Act 1951) ) as at which its value had to be assessed for purposes of compensation, which was February 22, 1954. Several witnesses gave evidence as to the value of the land, most of them valuing it on a "per acre" basis, and on the assumption that the whole of the land taken was of the same value ; and we have found it convenient to adopt this basis of valuation. The land taken had no buildings and little by way of improvements save fencing, clearing, and grassing. For our present purposes it may be described as "paddock land", that is to say, as fenced pasture-land without buildings or other improvements. The value of land in this condition may be described as "paddock value".

It is common ground that the market price of land in the Gisborne district was rising at the specified date, and that it has continued to rise from that date until the present time. Valuers who are now required to value Mr Forge's land as at February 22, 1954, have the benefit of later information concerning this rising trend in values, which was not available to buyers or sellers of land at the specified date. A valuer now valuing the property is entitled to have regard to all relevant facts within his knowledge, including information as to sales subsequent to the specified date for valuation, but should use that information only for the purpose of determining the market value of the land at that



date. It follows that though a valuer is entitled to make use of the facts disclosed by subsequent sales, he is not entitled to assume that such information was available to buyers or sellers at the specified date.

We have made reference to this aspect of the matter because of the difficulty in fixing the value of land at a particular date within a period of rising values. Because of this difficulty, and of the variation in values which is so frequently found where lands of similar quality are situated some distance apart, many of the sales quoted to us in this case were not in our opinion reliable guides to the value of Mr Forge's land. There were three sales, however, of land in close proximity to that taken from Mr Forge, which by reason of their nearness to the specified date are of considerable importance. In each case the sale price had been analysed by Mr Brittenden of the Valuation Department, who gave evidence for the Board, so as to arrive at the "paddock value" realized for the land sold. Particulars of these sales are as follows:

<i>Parties</i>	<i>Date of Sale</i>	<i>" Paddock value "</i> <i>realized</i>
Forge to Faulkner	12-3-54	£241 per acre
Forge to Judd	13-5-54	£243 per acre
McDonald to Taylor	15-2-54	£215 per acre

The sales by Forge to Faulkner and Judd respectively were the sales (already referred to) of the remaining parts of Mr Forge's land. The pieces of land sold to Faulkner and Judd were similar to those taken by the Board, save that some slight superiority was claimed in the quality of the land taken. The claimant's valuers were not satisfied that the sums of £241 and £243 above-mentioned represented the full "paddock values" realized by Forge in connection with these sales; and we incline to the view that, upon a more complete analysis of the value of the improvements upon the areas sold, the value as above assessed for the sale to Faulkner might be found to be a little high and that for the sale to Judd a little low. Both areas were virtually identical in character, and we are concerned to find the fair paddock value of the land as a whole, rather than separate values for each area. We do not think any further inquiry into individual values would materially affect the paddock value of the residue of Mr Forge's land, regarded as a whole, which we find, from the sales referred to, to be between £240 and £245 per acre. As both the sales were a little later in date than February 22, 1954 (and one of them nearly two months later), they probably reflect in a measure the rising market then existing. In all other respects they may reasonably be regarded as bona fide sales at a fair market value. The land taken by the Catchment Board may, however, have been a little easier to work than the areas sold to Faulkner and to Judd. Having regard to these factors in relation to the sales in question, we think the land taken by the Board may be tentatively assessed as of the value, at the crucial date, of £245 per acre.

Having arrived at £245 per acre as a tentative value, we have to consider the weight to be given to the other evidence before us, and in particular to the sale from McDonald to Taylor. There was a difference of opinion as to the quality of the land comprised in this sale, but we do not consider the paddock value assessed in respect thereof (£215 per acre) to be inconsistent with the value we have tentatively placed on Forge's land. Several of his witnesses valued Mr Forge's land at well above £245 per acre, but these values were not in accordance with market values as disclosed by a comprehensive schedule of sales



presented by Mr Brittenden. In particular they were not consistent with the prices secured by Mr Forge himself and by Mr McDonald in their sales to Faulkner, to Judd, and to Taylor respectively, within a short time of the crucial date. They were, moreover, entirely out of line with a valuation of £230 per acre which Mr Judd had accepted as a basis for fixing the compensation for part of his own land which was taken by the Board, being an area adjoining and similar in character to the land taken from Mr Forge. This settlement is not entitled to the same weight as if it were a sale in the open market, but is nevertheless a matter we are entitled to take into account in fixing the value of Mr Forge's land.

The Land Valuation Committee based its award of compensation upon a valuation of £270 per acre for Mr Forge's land, which it arrived at by making three additions, of £25, £10 and £5 per acre respectively, to a valuation by Mr Brittenden of £230 per acre. The Chairman has supplied a detailed and valuable statement of the Committee's reasons for its decision, but we regret we cannot agree that these additions were warranted. The addition of £25 per acre appears to have been due to a misconception concerning a statement made by Mr Brittenden in reply to questions directed to him by the Chairman. This statement was construed to be an admission by Mr Brittenden that his valuation of £230 was from £20 to £25 too low; but we do not think such an admission was intended by him, or that such an error on his part was satisfactorily established. The additions of £10 and £5 respectively were due to findings that Mr Brittenden had failed to give due weight to the superiority of the land adjacent to the river, and that his valuation was "conservative". We do not think either of these grounds for increasing Mr Brittenden's valuation was adequately supported in evidence. It does not follow, however, that Mr Brittenden's valuation is to be accepted as correct for we doubt whether it is consistent with the prices realized in the sales by Forge to Faulkner and to Judd.

The present claim is against a local authority which is dependent upon public funds in order to carry on its functions for the benefit of the community. Whilst we are not entitled to be over-generous in the assessment of compensation to the claimant, it is nevertheless our duty to award a sum which will fairly and adequately compensate him for the loss of the land of which he has had to be dispossessed in the public interest. We conceive that this will be achieved by valuing the land taken from him by the Board at £245 per acre.

In addition to sums totalling £345 upon subsidiary claims (not now in dispute), the Committee awarded £375 as compensation for delay in payment pending the settlement of the claim. This was intended, we understand, to represent interest upon the compensation moneys, calculated at five per cent. per annum. We think it is fair that interest should be paid upon the compensation moneys awarded, or upon the balance outstanding, from the date when possession of the land was taken by the Board (being the date the land was taken by Proclamation unless by agreement possession was taken at some other time), until date of payment, but for the reasons stated in *Barber v. Manawatu-Oroua River Board*, [1954] N.Z.L.R. 391, we think it more convenient that an order for payment of interest should be made. As to the appropriate rate of interest to be allowed, it has been our practice to allow four and a half per cent.; and, though we recognize that there is a tendency for interest rates to rise, we are not satisfied that interest at a higher rate should be allowed in the present case.



The final matter for consideration in connection with Mr Forge's claim is that of costs. We have indicated in previous cases that the costs to be allowed in compensation cases should be fixed by reference to the amount of work reasonably required of counsel rather than by reference to any scale. In Mr Forge's case the claim was for £8,675, and an offer of £5,250 had been made prior to the hearing. The award of the Committee was for £5,845 (exclusive of interest). The hearing before the Committee occupied more than a day, and was no doubt lengthened because the matter was regarded as a test case. The Committee allowed £105 for costs, together with £22 ls. for witnesses' expenses. The effect of this appeal is to reduce the compensation awarded to £5,345, together with interest. On the appeal, therefore, the Board has succeeded in part, and the compensation payable to the claimant will be reduced by approximately £500. For the guidance of Committees, we think it proper to say that in these circumstances, and having regard to the fact that upon certain subsidiary claims the Board was substantially successful, the award of £105 for costs was a generous one and we incline to the view that an allowance of fifty guineas for the first day and twenty guineas for the second day of hearing would have been adequate. Upon the appeal costs might properly be claimed by the Board, but as the case has been recognized to be a test case we think a course more liberal to the claimant should be adopted. We propose, therefore, not to interfere with the costs allowed by the Committee and to award to the claimant as the costs of the appeal an additional £31 10s., together with £15 for witnesses' expenses.

The appeal by the Board is therefore allowed and compensation will be awarded to the claimant Frederick Baynton Forge, as follows :

	£
(A) For land taken—	
20 acres 1 rood 18.2 perches, at £245 per acre, say	5,000
For injurious affection	127
For damage to maize crop	23
For loss on sale of chattels	195
	£5,345

(B) Interest thereon at four and a half per cent. from date of possession to date of payment.

(C) For costs the sum of £31 10s., together with £15 for witnesses' expenses (in addition to the sum of £105 and £22 ls. for witnesses' expenses allowed by the Committee).

#### KEMP BROS.' CASE

The land taken in this case comprised 59 ac. and 5 pp. of first-class land rather similar to that taken from Mr Forge, and 7 ac. 30 pp. of "accretion", being land lying at a lower level and liable to flooding. Owing to its similarity in general character the better land concerned in this claim was valued by both parties and, we assume, by the Committee, by a process of comparison with Mr Forge's land. It was agreed that in comparison with the latter, the Kemp Bros.' land suffered somewhat by reason of its locality, shape and liability to erosion.

Having regard to these disadvantages, Mr Lang for the claimants valued Kemp Bros.' land at £25 per acre less than Forge's land; Mr Brittenden for the Board at £36 per acre less; and the Committee fixed its value at £210 per acre, or £60 per acre less than it awarded to Mr



Forge. We agree that in general character the areas are so similar as to warrant our taking the value fixed for Forge's land as a standard for the valuation of Kemp Bros.' land. The question we have to consider is by how much the value of Kemp Bros.' land must be reduced on account of the disadvantages referred to.

The amount of the reduction in value which should be made on account of such factors as the shape and locality of the land and the risk of erosion is largely a matter for expert opinion; and, in this regard, the greater reduction was made by Mr Brittenden, and amounted to £36 per acre. In respect of part of the land taken, the risk of erosion was a serious one; but having regard to the fact that the proposed reduction is to be applied to the whole of the substantial area of first-class land which was taken, we think that a reduction of £60 in relation to the value of Forge's land (as made by the Committee) was too great.

We have reduced the Committee's valuation of Forge's land from £270 per acre to £245 per acre. We think a further reduction of £35 per acre is proper in the case of Kemp Bros.' land; and we thereby arrive at a value of £210 per acre for the first-class land, which happens to be the same amount as was fixed by the Committee. Though it has not influenced our decision, this was in fact the sum asked for by the claimants in their original claim.

The "accretion" of 7 ac. and 30 pp. is recognized to be of lesser value by reason of its serious liability to flooding. Mr Lang valued this area at £180 per acre, and Mr Brittenden at £130 per acre. We are of opinion that the accretion land should be valued at £140 per acre.

Certain subsidiary claims on which the Committee had allowed £910 were not disputed by either party on appeal. The Committee awarded also a sum of £1,080 for delay in settlement; but, in lieu of this allowance, we propose to make an order for interest, as in Mr Forge's case.

As to costs: the claim as prosecuted at the hearing was for £18,283, and the Committee's award was for £15,536. Before the hearing, the Board had offered £14,000. The Committee allowed for costs £105, together with £15 15s. for witnesses' expenses. Although the amount claimed and recovered was considerably more than in Forge's case the time taken for the hearing of Kemp Bros.' case was less, and considerable reliance was placed upon the evidence and argument presented on behalf of Mr Forge. Both the Board and Kemp Bros. appealed against the Committee's decision, but the decision has not been materially amended. As in the previous case, we shall not interfere with the Committee's award of costs, but having regard to the result of the appeal, the additional costs now allowed will be limited to fifteen guineas, together with £10 for witnesses' expenses.

The appeal by the Board is therefore allowed and compensation will be awarded to the claimants, Robert James Kemp, Harry Gerald Kemp, and Brian Geoffrey Kemp as follows:

(A) For land taken—	£
59 acres 0 roods 5 perches, at £210 per acre, say	12,400
7 acres 0 roods 30 perches, at £140 per acre, say	1,010
For injurious affection	910
	<hr/>
	£14,320

(B) Interest thereon at four and a half per cent. from date of possession to date of payment.



- (C) For costs the sum of £15 15s., together with £10 for witnesses' expenses (in addition to the sum of £105 and £15 15s. for witnesses' expenses allowed by the Committee).

#### PILMER'S CASE

The land taken from Mr Pilmer comprised a rectangular block of 21 ac. 1 ro. 16.3 pp., and was situated near to but on the opposite side of the Waipaoa River from the land taken from Mr Forge. Its general characteristics were similar to Mr Forge's land, but it was slightly lower in elevation and was alleged by the Board to be subject to flooding.

The Committee had awarded to Mr Pilmer £5,445 for the loss of his land, which it valued at £255 per acre, but it was agreed that this sum included an allowance of £100 for sheep-yards and £200 for a water-supply. The Committee's assessment of the "paddock value" of the land was therefore about £240 per acre. From this award both the claimant and the Crown have appealed.

The issues to be decided by the Court were: (1) the paddock value of the land (disregarding its liability to flooding); (2) the extent of its liability for flooding and the deduction (if any) to be made on that account; and (3) the value of the water-supply (the allowance for sheep-yards not being in dispute).

In the hearing of Mr Forge's case, we were led to believe by certain of his witnesses that Forge's land was equal to the best in Poverty Bay, and the same witnesses in Kemp Bros.' case valued Kemp Bros.' land by comparison with Forge's land, and upon the same assumption. We were therefore surprised in the present case to find the same witnesses, and others, claiming that Mr Pilmer's land was intrinsically superior to Mr Forge's land and more valuable to the extent of about £25 per acre. The explanation offered for this was that Mr Pilmer's land had been used for many years for grazing and was said to have "stored-up fertility" not to be found in land which had been recently cropped. If the fact that Mr Forge's land had recently been used for agricultural purposes was detrimental to its value, this should have been disclosed to us by the witnesses when giving evidence in support of his claim, and we cannot give full weight in this case to evidence which shows that these same witnesses were lacking in complete frankness in the earlier case. We are satisfied, moreover, that the values placed upon Mr Pilmer's land by these witnesses are not confirmed by any recorded sale of similar land near to the specified date for valuation, and we prefer to accept the evidence of Mr Brittenden that whatever the virtue attributable to pasture land which has been undisturbed for many years, the recorded sales disclose no preference for pasture land over land of equal quality which has been well farmed upon an agricultural or mixed farming programme. We are satisfied from the evidence, and after an inspection, that Mr Pilmer's land is first-class land, but not intrinsically better than Mr Forge's land, to which we have already given careful consideration. We therefore assess the paddock value of Mr Pilmer's land (subject to consideration of any reduction for flooding) as the same as was fixed for Mr Forge's land—namely, £245 per acre.

On the question of flooding there was a considerable diversity of opinion. It was claimed by the Board's witnesses that the land was invaded by flood-waters at regular (though infrequent) intervals, and that on occasions it had been "inundated" with flood-water to an extent sufficient to render any cropping programme hazardous. Witnesses for Mr Pilmer discounted the risk of flooding, and claimed that



it would have no material effect upon the price which the land would command in the open market. We do not propose to review the evidence in detail, but merely to state our findings, which are as follows :

(1) That the land adjacent to the river is lower than Mr Forge's land (which is recognized to be flood free) and is liable to receive a certain amount of flood-water from the river during high floods.

(2) That owing to a general fall away from the river, flood-water may be expected to run off fairly quickly so as to have little effect upon pasture, but with a material risk of damage to crops.

(3) That from a quarter to a third of the land, being that part furthest from the river, is liable to be covered with flood-waters, which may be expected to lie for some time during high floods.

(4) That the risk of flooding would be regarded as a detriment to the land by a prudent purchaser.

(5) That the value of the land should be depreciated on that account by £25 per acre.

As to the third matter in issue, the value of the water-supply, we think the sum of £250 should be allowed.

On the question of costs, the amount awarded by the Committee was fifty guineas, with ten guineas for witnesses' expenses. We shall not disturb this finding, and allow on appeal a further ten guineas, with, having regard to the limited value we place upon some of the evidence given, £5 only for witnesses' expenses.

The appeal by the Board is allowed and compensation is awarded to William Claymore Pilmer as follows :

(A) For land taken—	£
21 acres 1 rood 16.3 perches, at £220 per acre, say	4,700
For sheep-yards	100
For water-supply	250
	£5,050

(B) Interest thereon at four and a half per cent. from date of possession to date of payment.

(C) For costs the sum of £10 10s., together with £5 for witnesses' expenses (in addition to £52 10s., and £10 10s. for witnesses' expenses allowed by the Committee).

*Orders accordingly.*

Solicitors for the appellant Board : *Nolan and Skeet* (Gisborne).

Solicitors for the respondent, F. G. Forge : *Woodward, Iles, and Furness* (Gisborne).

Solicitors for the respondents, Kemp Bros. : *L. C. Parker* (Gisborne).

Solicitors for the respondent, Pilmer : *Gillanders Scott and Wilson* (Gisborne).