1932 *Present :* **Dalton and Drieberg JJ.**

GOVERNMENT AGENT ; WESTERN PROVINCE *v.* IBRAIM AHMED.

63—D. C. Avissawella, No. L.A. 4.

Land acquisitoin—Exaggerated claim by defendant—Sum tendered insufficient as compensation—Costs.

Where, in Land Acquisition proceedings, the defendant was found to have exaggerated his claim and the sum offered by the plaintiff was found to be insufficient compensation for the value of the land; and where it also appeared, that the case put forward in the lower Court on behalf of the plaintiff did not show such careful preparation as the Court might have been entitled to expect.

Held, that each party should bear his own costs in the lower Court.

APPEAL from an order of the District Judge of Avissawella.

J. E. M. Obeyesekere, C.C., for appellant.

Garvin (with him *Marikar*), for respondent

[1] *9 Eq. 103.*

July 26, 1932. DALTON J.—

This was a reference by the plaintiff under the provisions of Ordinance No. 3 of 1876 (Land Acquisition) in respect of a piece of land at Avissawella, 6 acres 2 roods and 0.1 of a perch in extent. The sum of Rs. 9,742 had been tendered as sufficient and proper compensation to be allowed, but the defendant refused this sum and claimed compensation at the rate of Rs. 5,000 an acre. The District Judge awarded the sum of Rs. 17,720.55 as compensation, from which decision the plaintiff appeals.

The first matter for comment is that the amount of evidence led to assist the Court in its task is very small. One would have thought that both sides might have been able to amplify it, especially on such a matter as local assessments which, it is suggested by the plaintiff, show an appreciable increase in the value of properties, at any rate for two years prior to this acquisition, the date of which is August 12, 1929.

For the purpose of making a valuation the land acquired has been divided up on a plan P 4 into three lots. Lot No. 1 is 2 roods and 36 perches in extent along a stream, described as low-lying swampy land. Lot No. 2 again for convenience' sake has been roughly subdivided into three portions (*a*) 1 acre 2 roods and 24 perches in extent, land suitable for building, tapering to a point, with a road frontage, (*b*) 2 roods and 1 perch, low-lying with a drain running through it, (c) 3 acres 1 rood and 14 perches building land at the back of (*a*) and previous acquisitions, with no road frontage. Lot No. 3 is a low-lying swampy hollow in the middle of lot 2 (*c*) and is 1 rood and .05 of a perch in extent.

A previous acquisition of a block 1 rood and 32.5 perches in extent had taken place on July 1, 1927. This block lies in the middle of the block now acquired with a road frontage and is obviously from its position (*vide* plan) a valuable piece of the whole, taking the two acquisitions together. This block of 1 rood and 32.5 perches was acquired at the rate of Rs. 2,000 per acre.

On August 18, 1927, another larger block 3 acres 3 roods and 20.65 perches had also been acquired, at the rate of Rs. 3,000 per acre. This lies to the north of the block now being acquired, separated from it by a small stream, and has a road frontage. It is compact and of a convenient size, being rectangular, thereby differing from the block now acquired which tapers to a point. The gradient from the top to the road is also less steep and irregular, a fact of considerable importance in considering the cost likely to be incurred in building on the land. On the same date a very small piece of land 7.45 perches in extent was acquired at the rate of Rs. 1,000 an acre. It borders the stream above mentioned, being apparently the only low-lying position of the larger block acquired on the same date.

These three previous acquisitions, as the trial Judge points out, are a safe guide to the value of the land in that locality. The amounts offered had been accepted in each case without dispute, and the Government Appraiser, Mr. Kirk, in the present case based his valuation of the land now being acquired on the figures previously paid. It is urged for the

appellant that the trial Judge was not justified in departing from that safe guide, which he stated in his judgment was a very strong point in favour of the Crown, and that his conclusions are not supported by the evidence.

The question at once arises why the trial Judge has departed from this safe guide. The answer is that an offer had been made to the defendant towards the end of 1927 for 1 acre of the block now being acquired, for the sum of Rs. 4,500. This 1 acre is carved out of lot No. 2 to which I have referred. Accepting this as showing the value of the land, he has worked out the value of the remainder from this starting point.

This offer was made towards the end of 1927 by Mr. J. de Jacolyn, a Proctor and Notary practising at Avissawella. There is no evidence to show that this offer was ever made known to the Government Agent at the inquiry, nor did it apparently come to the notice of the Government Appraiser prior to the hearing in the District Court, but Mr. de Jacolyn was called as a witness there. Two bungalows had been put up on the block of 1 rood and 32.5 perches previously acquired, which seem to have attracted his notice, and he made an offer for 1 acre adjoining the block apparently for the purpose of building a house for himself. He was told he could not get it for less than Rs. 5,000, but the owner agreed to let him have it for Rs. 4,500. The witness admits he has himself not much idea of land values, but he understood he had made a bargain. Nothing is said as to how the value was arrived at, but he states defendant owns all the available land in Avissawella, hence it is very difficult to say what is the real value of land there.

No explanation is offered of the extraordinary jump in land values on this site said to have been taken place between August, 1927, and the end of the year, and the reasonable conclusion with regard to this offer seems to me on the evidence adduced to be this, that it was a special offer for the best piece of land on the site selected by Mr. de Jacolyn to build a house for himself, governed by personal reasons and not as a business proposition. That it affords evidence, as the trial Judge states, that the price of land there had more than doubled, and that in less than six months I am quite unable to agree. The previous acquisitions in 1927 were on July 1 and August 18, and there was no increase at any rate between those two dates. The remarks of one of the assessors, Mr. Perera, seem to me to be most apposite on this point, and he concludes the reasons for the offer were personal and peculiar to Mr. de Jacolyn, the 1 acre block selected being obviously the pick of the block, the owner also realizing that the value of the rest of the land would be most seriously affected. With this 1 acre block divided off and sold, the land behind would have no outlet to the road save through a lowlying and swampy piece of ground, whilst the small triangular portion left to the south would be of very little value. The offer was not proceeded with, for the witness states that when he heard that the Government was going to acquire the whole land, he decided not to buy the land.

For these reasons I think the trial Judge was wrong in departing from the previous acquisitions as a safe guide for proceeding to value the present acquisition. I am of opinion that Mr. Kirk was correct in basing

his figures upon them at any rate as a starting point. With respect to the evidence of Mr. Kirk complaint has been made on appeal that the learned Judge has been unduly hard upon this witness and has made remarks about him and his evidence which are not justified. I think there is some ground for that complaint. The learned Judge states he was not convincing and would not give a direct answer to a single question. That latter defect, in my experience, is not uncommon, when professional or expert witnesses are giving evidence. The attitude referred to is not always helpful, but it does not necessarily mean that the witness is insincere or is untrustworthy. It may even be due to his desire to explain matters to the Court, which he assumes requires enlightenment on questions usually not within the knowledge of the Judge. If he does not directly say so, one must assume that the learned Judge wishes one to understand that he found the witness was not truthful, since he compares his evidence with that of another witness whom he says he found " at least truthful and candid ". I can find nothing in the evidence to support any such conclusion as to Mr. Kirk's evidence. On one point as to the existence of a previous development scheme he is ambiguous and unsatisfactory, and he does possibly lay himself open to adverse comment, but no attempt seems to have been made to clear up this point by either side. I deal further with this matter later. On other points, such as the amount of building land available in Avissawella, rents paid, increase in assessments, he may have made cursory local inquiries, but the evidence led for the defendant seems to me to be open to exactly the same criticism. The reference in the judgment to his evidence in some other proceedings, referred to by the trial Judge as " the recent bribery case " would lead one to think that the Court took into consideration in weighing the evidence of the witness some previous evidence or statements by him that were never put to the witness when he was in the witness box. What that evidence was there is nothing on the record to show.

The purpose for which the land was being acquired was stated to be for building houses for Government servants, and the question of the cost of preparing sites for building and making roads came up for consideration. Mr. Nathanielsz, the Provincial Engineer, had prepared a building dvelopment scheme (Exhibit P 9), for erecting thirty-one buildings and for making the necessary roads. The cost of site and road formation he put at Rs. 14,300, although he does not seem quite sure about his figures. When this scheme was prepared is not stated, but the Exhibit P 9 has a note to the effect that it accompanied a communication from the Provincial Engineer to the Government Assessor in 1930. In February of that year, however, he gave the Government Assessor an estimate of the cost of site and road formation amounting to Rs. 10,000 only. It is true Mr. Nathanielsz states his later figures are more reliable, but Mr. Kirk utilized the estimate sent him in making his valuations, for which, it seems to me, he cannot be blamed. For doing so he has been adversely criticised by the learned Judge, who actually suggests the Appraiser has artificially adjusted his figures to meet his own valuation. The learned Judge seems to me to have overlooked the fact that he had obtained an estimate of Rs. 10,000 from the Provincial Engineer, which the latter

himself seems to have forgotten until reminded of it when in the witness box. At one point, in cross-examination, Mr. Kirk does state that in making his valuation he had referred to a building scheme, which he says had been scrapped. In re-examination on this point, he states he confirmed his valuation, after consideration of the previous acquisitions by making calculations on a hypothetical building scheme, presumably the earlier scheme already referred to by him. One gathers from the re-examination that plaintiff's counsel had no knowledge of this earlier scheme, but the matter does not seem to have been further pursued. The scheme (P 9) put forward by the Provincial Engineer was apparently not in existence until 1930. The Provincial Engineer describes this as "the first complete building scheme proposed". Whether or not there was any previous scheme for building, such as Mr. Kirk referred to, he was not asked, but his description of the scheme P 9 and the use of the word "complete" are not incompatible with the existence of some previous incomplete proposals, such as Mr. Kirk mentions. In any event, however, Mr. Kirk's calculations seem to me to be too much in the nature of conjectures to form the basis of any real test as to the value of the land by this method.

On the question of increases of land values after the 1927 acquisitions due to those acquisitions I agree with the trial Judge that there is some evidence to support the case for the defendant. Mr. Kirk suggests that the value of the adjoining land would be decreased, because people would see that building was very costly, but I do not think there is much in that suggestion. On the other hand there is evidence to show that the two bungalows put up were attractive enough to draw Mr. de Jacolyn to the vicinity. Mr. Kirk, however, as has been pointed out, had no knowledge of Mr. de Jacolyn's offer until the evidence was actually given in Court. The increases in assessments in 1929, as shown by the assessment register, are fairly numerous, and it is impossible to think that a large proportion of them are solely due to improvements in the properties, although the evidence might have been more definite on this point. There was a slight drop in the figures of 1928, compared with those for 1927, which was apparently due to the figures of 1925 being adopted for rubber lands, but there was a considerable increase in the next year. The increase in annual values between 1928 and 1929 is shown to be Rs. 7,951, although the assessments of rubber lands had been reduced.

On the subject of increase in rents between 1927 and 1929 the learned Judge states he accepts the testimony of the defendant's witnesses, Gnanapragasam and Fernando, who, he states, speak to actual facts as known by them, rather than the inferences of Kirk. I quite agree that the evidence of Kirk on this point does not help the Court. On the other hand, of the other two witnesses mentioned I cannot find that Fernando mentions increase of house rents at all, whilst Gnanapragasam although he states he knows of some cases where rent had gone up 500 per cent., does no more than mention one specific case of an increase known to him. The one case he mentions is the raising of the fiscal's rent for a dwelling house from Rs. 20 to Rs. 40, but it does not seem to me to be of any value standing alone, even if it was within the years 1927 to 1929, which is not

at all clear. Apart from this he speaks in general terms and states there was a 100 per cent. rise in house rents in 1927 when he adds the highest level was reached. If only specific instances showing how and why he came to this conclusion had been given, his evidence might have been of some value on this point. The establishment of a District Court at Avissawella is mentioned as being a cause for these increases, but when the evidence on this point is analyzed, we are again without any specific cases to help us. There is in fact no evidence on the record as to when this District Court was established at Avissawella, but we have been informed in the course of the argument before us that it was in August, 1927. If so is it not likely that the earlier acquisitions were affected by it, if it had any such effect as is here contended ? The trial Judge himself says " it is well known " that such an event would ordinarily enhance the value of land generally. He adds " even Mr. Kirk had to admit that it would increase the demand for offices and quarters ". Gnanapragasam speaks of large increases in the value of land after the establishment of the District Court, but no instance is given of such an increase, and he goes at once to mention the case of increase of rent, to which I have already referred. There was already a Police Court and Court of Requests at Avissawella, and the establishment of the District Court, I understand, meant that the Police Magistrate also became District Judge with possibly (there is no evidence on this point) an addition or additions to his staff. The establishment of the District Court may or may not have brought about a demand for more offices and dwellings, but this is a matter of evidence, and I can find very little in the evidence led on this point which is of assistance in deciding this particular question.

With regard to the value of the land for tenement buildings there is the evidence of the witness Fernando, which on this matter is very definite and to the point. Kirk, of course, had no local knowledge nor do his local inquiries seem to have gone very far. Fernando himself has tenements and he says he has been approached on many occasions to put up more. There is evidence to show there was a growing demand for this type of building, and building sites are few. Considerable expense no doubt would have to be incurred on the site acquired to make it ready for the erection of even tenement buildings, but it would naturally cost less than any development scheme for small houses or bungalows.

Lastly, on this question of increase of land values in Avissawella, the introduction of water service and electric light is referred to by the witness Gnanapragasam. Unfortunately, however, there is no evidence at all to show when these improvements reached Avissawella. They are only referred to in a general way by the witness Gnanapragasam, and there is nothing to show they had any bearing on any alleged increase in land values between 1927 and 1929.

The witnesses Gnanapragasam and Fernando, called for the defendant, in respect of their valuations of the land do not seem to make any reference to the previous acquisitions in 1927 in arriving at their conclusions. It is not necessary, however, to consider their valuations in any detail, as the trial Judge has correctly, in my opinion, come to the conclusion that their valuations are open to question for want of expert knowledge. That conclusion has not been questioned on appeal.

With the evidence of defendant's son, as to why the offer made for the earlier acquisitions in 1927 was accepted, the learned Judge does not deal, apart from stating that Mr. de Jacolyn's offer showed the price of land had more than doubled between August and the end of 1927. The witness had been his father's attorney for ten to fifteen years, doing all his business for him. He states he did not go into the question of the values of the previous acquisitions until after the acquisitions, as his father was seriously ill at the time. He states, however, he consented to a low valuation, which could not be otherwise if his present claim at Rs. 5,000 per acre all round is to be substantiated. The truth of the matter seems to me to lie in the fact that defendant, as witness says, is very wealthy and owns practically the whole of Avissawella, that the witness had no means of testing the value of the land acquired in 1927, for example, by other sales, and that he was satisfied with the amount then tendered as being a fair offer.

The unreality of Mr. de Jacolyn's offer as forming any test as to the real value of the whole block acquired is further apparent when one considers the learned Judge's valuations of the lots outside the block. Lot 1 he has valued at the same rate per acre as the 1 rood and 32.5 perches acquired in 1927, the latter from its position a valuable building site, with a road frontage, and lot 1 being swampy land which would require very considerable filling in and unsuitable for building purposes, according to the evidence of Mr. Nathanielsz, for a considerable period of time. Lot 1 moreover has no road frontage. His valuations of the different portions of lot 2 and the effect upon the remainder of lot 2, after the 1 acre has been carved out of it, I have already dealt with.

Commencing then with the previous acquisitions as a safe guide and as a starting point for arriving at the valuation of the acquired land, and having due consideration for the evidence of increases in values under the headings dealt with, which I have set out, I have come to the following conclusions. Taking the lots into which the land has been divided on plan P 4, a sufficient and proper compensation for lot 1, 2 roods and 36 perches in extent, I put at Rs. 1,250 per acre. For lot 2, I would put the compensation to be paid for the portion (*a*) 1 acre 2 roods and 24 perches in extent at Rs. 2,500 per acre; portion (*b*) 2 roods and 1 perch in extent at Rs. 1,500 per acre; and portion (*c*) 3 acres 1 rood and 14 perches at Rs. 2,000 per acre. With regard to lot 3, 1 rood and .05 of a perch in extent there is no dispute, the compensation tendered at Rs. 750 per acre being accepted. In the result, on this valuation the defendant will be entitled to the sum of Rs. 12,676.62. The appeal is therefore allowed to this extent. Save with regard to the assessors' fees the decree of the lower court is set aside, and decree will be entered for this sum.

With regard to the costs of the proceedings in the lower Court, it is quite clear that the defendant put forward a much exaggerated claim. On the other hand, the case as put forward in the lower Court on behalf of the plaintiff does not show such careful preparation as the Court might have been entitled to expect, whilst the sum offered has been found not to be sufficient and proper compensation for the land at the

time of the acquisition. Under all the circumstances I would direct that each party pay his own costs in the lower Court. On the appeal, each party being partially successful, I would make no order as to the costs of appeal.

DRIEBERG J.—I agree.

Order varied.