

BETWEEN:

1938
Sept. 14 & 15
1939
Aug. 21.

HIS MAJESTY THE KING, on the }
Information of the Attorney-General } PLAINTIFF;
of Canada

AND

ISABEL GERTRUDE SPENCER.....DEFENDANT.

*Expropriation—Fair value of land expropriated—Municipal assessment—
Value to owner—Replacement cost and depreciation of buildings at
time of expropriation—Compensation for moving expenses.*

Plaintiff expropriated certain land in Vancouver, B.C., the home property of defendant. In an action to determine the value of the property the Court found that the amount offered by the plaintiff in payment therefor was too low.

Held: That municipal assessment for taxation purposes may assist in arriving at a fair valuation of a property, but it is not in itself a determining factor.

2. That one of the main factors to consider to arrive at a fair valuation is the market value, but the market price is not necessarily a conclusive test.
3. That the proper manner in which to value the particular property expropriated in this instance is to arrive at the replacement cost and deduct therefrom the depreciation which the buildings now standing have suffered since their erection.
4. That the defendant has a right to be compensated for expenses necessarily incurred for moving.

1939
 THE KING
 v.
 ISABEL
 GERTRUDE
 SPENCER.
 Angers J.

INFORMATION by the Crown to have certain property expropriated in Vancouver, B.C., valued by the Court.

The action was tried before the Honourable Mr. Justice Angers, at Vancouver.

W. B. Farris, K.C. and *Dugald J. McAlpine* for plaintiff.
H. I. Bird for defendant.

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

ANGERS J., now (August 21, 1939) delivered the following judgment:

This is an information exhibited by the Attorney-General of Canada whereby it appears that the land hereinafter described belonging to the defendant was expropriated for the purpose of a public work of Canada, to wit, the Jericho Beach Air Station, by depositing under the provisions of the Expropriation Act (R.S.C., 1927, chap. 64) on the 25th day of April, 1938, a plan and description of the said land in the Land Registry Office of the City of Vancouver, in the Province of British Columbia, in which registration division such land is situate.

The land so expropriated is described as follows:

All and singular those certain parcels of land and premises situate, lying and being in the City of Vancouver, in the Province of British Columbia, and more particularly known as lots three (3) and four (4), Block one hundred and thirty-two (132), District Lot five hundred and forty (540), Group one (1), New Westminster District.

The information alleges that by an order dated November 11, 1927, made under the Plans Cancellation Act, a certain road allowance theretofore running through the

1939
THE KING
v.
ISABEL
GERTRUDE
SPENCER.
Angers J.

said land was vested in the defendant, subject to a condition that the northerly ten feet of such land should be dedicated to the City of Vancouver as a lane, and pursuant to such order the whole of the land above described, less the northerly ten feet, was redescribed as "Lot 'A' of Block one hundred and thirty-two (132), district lot five hundred and forty (540), group one (1), New Westminster District Plan 2125," and that upon such plan the said northerly ten feet are shown as a lane and is therefore dedicated to and vested in the City of Vancouver as such.

The information further sets forth that at the time of the taking of the said land the defendant was seized of an estate in fee simple in the said land, except the northerly ten feet thereof, and claims that she has sustained loss and damage in respect of her estate and title as aforesaid by reason of the said expropriation.

The information states that His Majesty the King is willing to pay to the defendant the sum of \$49,150 in full satisfaction of her estate, right, title and interest, free from encumbrances, in the said land and of all claims in respect of damages or loss, if any, that may be occasioned to the defendant by reason of the said expropriation.

The information in addition says that on June 4, 1938, His Majesty the King tendered to the defendant the sum of \$49,150 and that she refused to accept it.

In her statement of defence, the defendant admits the allegations contained in the information, save those set forth in paragraphs 5 and 7 thereof, in which it is averred that His Majesty is willing to pay to the defendant the sum of \$49,150 in full satisfaction of her estate, right, title and interest, free from encumbrances, in the said land and of all claims in respect of damages or loss, if any, that may be occasioned to her by reason of the expropriation, and that His Majesty is not aware of any other facts material to the determination of the question involved herein.

The statement of defence then alleges in substance:

The strip of land ten feet wide lying north of Lot "A," Block 132, District Lot 540, Group 1, New Westminster District, Plan 2125, was dedicated to the City of Vancouver as a lane by the order mentioned in the information

and the said strip of land is not now or never has been the property of the defendant;

on or about the 18th of August, 1919, the defendant acquired by purchase title in fee simple to the land described in the information;

subsequently the defendant applied for, under the provisions of the Plans Cancellation Act, R.S.B.C., 1924, chap. 194, and was granted an Order on November 11, 1927, whereby the road allowance extending from the east to the west boundaries of the said lots at the northerly end thereof was vested in the defendant subject to the dedication to the City of the ten-foot lane allowance mentioned in the information;

since the purchase of the said land and premises the defendant has maintained the buildings situate thereon in a perfect state of repair, has installed therein all modern conveniences and has made extensive improvements to the residence;

the defendant has developed and improved the said land by the erection of a garage with living quarters, a gardener's cottage, two greenhouses, a barn, chicken house and outbuildings, as well as a non-skid tennis court;

the defendant has further developed and improved the said land comprising approximately six acres, by laying out the said land in lawns and gardens, by the planting of shade and ornamental trees and shrubs, by the construction of a pool, driveways and paths and by the erection of stone, concrete and ornamental iron fences, walls and gates;

the said land and premises were acquired and have since been developed and improved with a view to establishing a permanent home for the defendant, her husband and her family of seven children ranging in age from five to twenty-four years and the defendant neither needed nor desired to sell the said land and premises;

the defendant has installed in the said residence furniture, rugs, curtains, drapes and fittings adapted thereto, which will not be adaptable to other residential premises;

the said land and premises are of unusual character;

there are no other properties in the City of Vancouver or its vicinity with which the said land and premises can be fairly compared and by reason of these facts the market value of the said land and premises is incapable of ascer-

1939

THE KING

v.

ISABEL
GERTRUDE
SPENCER.

Angers J.

1939
THE KING
 v.
ISABEL
GERTRUDE
SPENCER.
Angers J.

tainment; the defendant therefore claims that the compensation to be awarded her should be assessed upon the basis of the intrinsic value to her of the said land and premises which she places at the sum of \$120,000 computed as follows:

5.86 acres of land as developed by the defendant, \$40,000;
 residence and outbuildings..... 80,000;

the defendant, by reason of the expropriation, will be put to an expense of \$5,000 in obtaining other premises, in storing her furniture and in moving; she will also suffer loss from depreciation in the value of the furniture and other contents of the said premises to the extent of \$7,500;

the defendant prays that it be declared that the tender of \$49,150 is not a sufficient compensation and that the defendant is entitled to the sum of \$145,750 computed as follows:

| | |
|--|-----------|
| value of 5.86 acres of land..... | \$40,000 |
| value of residence and outbuildings..... | 80,000 |
| depreciation on contents of residence..... | 7,500 |
| removal expenses and expenses to be incurred on the acquisition of other premises..... | 5,000 |
| 10% for compulsory taking..... | 13,250 |
| | \$145,750 |

The defendant purchased the property in question from Canada Loan & Mortgage Company in 1919 for \$25,000. She has lived in it since and was living in it at the time of the expropriation with her husband and her seven children, ranging in age from five to twenty-four years. She acquired it and improved it with a view to establishing a home for herself, her husband and her family. She neither needed nor desired to sell it; she received at various times offers of purchase but constantly declined them. Since her acquisition, the defendant made many additions and improvements to the property. Colonel Spencer, the defendant's husband, said that it was now about two-thirds larger than it was when his wife bought it. Among the additions effected are a living room, a den, four bedrooms and also bath rooms. The plumbing and the electric wiring were renovated. The basement was excavated and cemented and a laundry room with all the necessary fixtures and refrigeration plant were installed therein. A new furnace was put in. The garage was reconditioned and a dwelling built for the chauffeur. A gardener's cot-

tage, two greenhouses, a barn and a chicken house were constructed. Entrance gates and iron fences were installed; stone and concrete walls were erected in the garden; driveways and paths were made; shade and ornamental trees and shrubs were planted. An asphalt tennis court with its necessary accessories was laid. A concrete fish pond was built. Other additions and improvements of lesser importance were effected which I do not think expedient to enumerate.

The plan filed as exhibit A indicates clearly the site of defendant's property at the corner of Trimble street and Second avenue, in a suburban residential district. It is bounded at the back by Imperial street, now partly closed, on the other side of which are the Jericho Golf Links; almost in front, across Trimble street, is Locarno Park Addition. The property is situated at approximately 1,250 feet from English Bay and, as the land slopes down toward the beach, there is from the defendant's property an unobstructed view of the bay.

The area of the land is mentioned in the statement of defence as being 5.86 acres. Douglas Reeve, real estate agent and chartered surveyor, called as witness on behalf of defendant, estimated the area at 5.87 acres. I shall adopt the figure mentioned in the defence, viz., 5.86 acres.

Reeve inspected the house and prepared a detailed description of the interior thereof, a copy of which he produced as exhibit B. I had the opportunity, during the trial, to visit the property, accompanied by counsel. I may say that, as far as my memory goes, Reeve's description on the whole—there are details which, after a single and comparatively short visit, it is practically impossible to recollect—is accurate and trustworthy. I may add that the house impressed me as being a fine, spacious, comfortable and cozy home, in a good state of repair. The property as a whole appeared to me well kept.

Reeve placed a value of \$38,166 on the land and cultivation (trees, shrubs, hedges, etc.) and of \$73,648 on the buildings (house, garage, cottage, greenhouses and boiler house, barn and chicken house), the driveways and walks, the iron fences and the entrance gates, the stone walls, the fish pond, the tennis court and the manure pit, making a total valuation for the property of \$111,814, as shown

1939
 THE KING
 v.
 ISABEL
 GERTRUDE
 SPENCER.
 Angers J.

1939
THE KING
 v.
 ISABEL
 GERTRUDE
 SPENCER.
 ———
 Angers J.
 ———

by the memorandum prepared by the witness and produced as exhibit C.

Witness arrives at the figure of \$38,166 for the land and cultivation as follows (exhibit C):

| | |
|---|--------------|
| 5.87 acres at \$4,392 per acre..... | \$25,781(04) |
| cultivation and planting, 4.25 acres at \$1,500 per acre. | 6,375 |
| trees, hedges, etc. (as appraised by witness F. B. Williams)..... | 6,010 |
| | \$38,166 |

The sum of \$73,648 for the buildings, the stone walls, fences and gates, the driveways and walks, the fish pond, the tennis court and the manure pit is made up thus:

| | | |
|---|---|----------|
| house | \$82,620, less depreciation \$24,340..... | \$58,280 |
| garage | 2,940, " " 1,470..... | 1,470 |
| cottage | 890, " " 445..... | 445 |
| greenhouse | 730, " " 365..... | 365 |
| greenhouse | 1,930, " " 965..... | 965 |
| boiler house | 220, " " 110..... | 110 |
| boiler and pipes.. | 400, " " 200..... | 200 |
| cow barn and chicken house.. | 400, " " 200..... | 200 |
| manure pit..\$ 75 | | |
| fish pond ... | 40 | |
| driveways .. | 680 | |
| walks | 215 | |
| steps | 60 | |
| | 1,070, " " 270..... | 800 |
| stone walls (as appraised by witness John McCarter) | 7,210, " " 910..... | 6,300 |
| entrance gates and piers — cost in 1936 | 1,818, " " nil | 1,818 |
| iron fence | 1,187, " " 463..... | 724 |
| tennis court | 1,500, " " 150..... | 1,350 |
| fence | 480, " " 48..... | 432 |
| concrete base to fence | 210, " " 21..... | 189 |
| | \$103,605 | \$29,957 |
| | | \$73,648 |

Reeve estimated the replacement cost of the house at \$82,620, as summarized in the statement filed in exhibit E. This figure is the same as the one appearing in the memorandum of valuation (exhibit C) hereinabove referred to.

Reeve distributed the replacement cost thus (exhibit D):

| | |
|---|----------|
| for the house as it stood when purchased by the defendant | \$42,201 |
| for the west wing erected by the defendant since acquisition of the property and for the additions and renewals made by her in the old section of the house | 40,419 |
| | \$82,620 |

1939
THE KING
 v.
 ISABEL
 GERTRUDE
 SPENCER.
Angers J.

The original house having been erected 26 years prior to the expropriation and the additions and renewals therein as well as the new wing having been made 13 years prior thereto, Reeve, fixing the rate of the depreciation at 1½ per cent per year, computed the total thereof at \$24,340 (the amount set forth in the statement exhibit C) as follows:

| | |
|--|----------|
| 39%, i.e., 26 years at 1½%, on \$42,201..... | \$16,458 |
| 19·5%, i.e., 13 years at 1½%, on \$40,419..... | 7,882 |
| | \$24,340 |

A memorandum showing the mode of reckoning the depreciation, prepared by Reeve, was produced as exhibit D.

Reeve said that it was difficult to place a market value on the Spencer property; demands for properties of this size and character are rather scarce. In witness' opinion, a fair value would be \$80,000; according to him, a property of this size is generally sold at a loss of about 25 per cent.

In cross-examination Reeve stated that he would probably be able to sell the Spencer property, within a delay of ten years, for the sum of \$80,000.

In his opinion airplane hangars affect to a certain extent the value of the surrounding properties.

Reeve said he considered the city assessment of \$49,150 too low. This assessment, according to him, is made up as follows:

| | |
|---------------------|----------|
| land | \$16,850 |
| residence | 30,000 |
| out buildings | 2,300 |
| | \$49,150 |

The assessment for the land would seem fair enough to the witness, if it were not for the cultivation thereon.

The assessment in 1931 was higher; the value of the residence was then fixed at \$55,000.

1939
 THE KING
 v.
 ISABEL
 GERTRUDE
 SPENCER.
 Angers J.

Reeve said that lots 1 and 2 in block 132 were sold to the Dominion Government in 1937 or 1938 in their natural state for \$15,930; these lots are approximately six feet lower than lots 3 and 4. The Spencer lots have been filled and they are underdrained. I believe that, at the date of the expropriation, lots 3 and 4 were worth more than lots 1 and 2.

According to witness, the assessment of lots between Second and Third avenues in the neighbourhood is \$4,537 per acre.

The assessment of lots on Second avenue, opposite the Spencer property, is \$18 per front foot; the assessment of the Spencer property is equivalent to \$12.50 a front foot.

The eastern portion of lot 133 is assessed at \$2,811 an acre.

The assessment of block 130 between Sasamat and Trimble streets is \$18,225, representing \$5,023 per acre.

Block 129, having an area of 3.45 acres, is assessed at \$22,060, which is equivalent to \$6,394 per acre.

Henry V. Sharples, a real estate agent, was engaged by the Dominion Government for the purchase of property for the Jericho Beach Air Station during the early part of 1937. He acquired lots 1 and 1A to lots 11 and 11A of block 128 and lots 1 and 1A to lots 9 and 9A of block 129, situate between the Marine Drive and English Bay and between Blanca Drive and Sasamat street: see plan exhibit F. These lots were bought for a total price of \$123,050, as shown on the list of prices prepared by Sharples and filed as exhibit G. They were later exchanged with the City of Vancouver for the lots marked with the letter A in pencil on plan exhibit F. The price paid for the lots purchased by Sharples for the Crown amounted to a little over \$5,000 an acre. In witness' opinion, a property having a water frontage has a greater value.

William D. Jacobs, real estate agent, cited the following sales made in 1937 or the early part of 1938:

| | |
|--|---------|
| lot 12 of block 139, district lot 540, for | \$1,180 |
| lot 9 " " " " " " " | 900 |
| lot 7 " " " " " " " | 975 |
| lot 15 " " " " " " " | 800 |
| lot 28 " " " " " " " | 650 |

In witness' opinion these prices were low on account of the dullness of the real estate market.

Maurice Helyer, structural engineer with the firm of McCarter & Nairne, architects and structural engineers, inspected the Spencer property during the month of August, 1938; he went there several times and made a survey of all the materials contained in the residence and the out buildings; with this he prepared an estimate of the cost (see exhibit H).

1939
 THE KING
 v.
 ISABEL
 GERTRUDE
 SPENCER.
 Angers J.

His total estimate was \$97,521.83, as follows:

| | |
|-------------------------------|-------------|
| house | \$80,134 33 |
| garage | 2,657 00 |
| chauffeur's house | 1,394 00 |
| entrance gates | 1,932 50 |
| greenhouse No. 1 | 795 00 |
| greenhouse No. 2 | 2,130 00 |
| greenhouse heating plant..... | 674 00 |
| barns | 595 00 |
| garden walls | 7,210 00 |
| | <hr/> |
| | \$97,521 83 |

Helyer said that the first page of the survey and estimate filed as exhibit H was the work of Mr. McCarter, but that the following pages represented his own work; all the measurements were taken by the witness. The cost of replacement of the house is estimated at \$80,580, as indicated on page 2 of the survey and estimate aforesaid.

The estimate of the cost of the out buildings includes all the buildings apart from the residence.

In cross-examination Helyer said that he had made no allowance for depreciation; he estimated all the buildings as new. He admitted that there was some depreciation but said that he could not figure it out.

John McCarter, architect, who said that he had had 25 years experience as such in British Columbia and had obtained several important contracts (Marine Building, Medico-Dental Building, Hall Building, Post Office Extension, Vancouver) and made plans for various residential buildings ranging in price from \$12,000 to \$35,000, testified that he had inspected the Spencer property during the two weeks preceding the trial and had made an estimate of the cost of replacement. He said that he used the method generally adopted for estimates of buildings, known as the "cube cost." The cubic contents of the house are, according to his figures, 240,403 cubic feet. McCarter drafted plans of each of the floors of the house,

1939
THE KING
v.
ISABEL
GERTRUDE
SPENCER.
Angers J.

which were produced as exhibit I. According to witness, the figures set forth in the survey and estimate exhibit H can be checked on the plans exhibit I; after verification, I may say they can. The sum of 33½ cents per cubic foot is, in McCarter's opinion, fair and reasonable. He considers that the house could be built to-day for the sum of \$80,134.33 mentioned on the first page of exhibit H.

In cross-examination McCarter stated that he had not taken the depreciation into consideration. He estimated the depreciation of the residence in use for about 25 years at one half of one per cent per year.

James C. Macpherson, real estate broker for 28 years, president and manager of the Pemberton Realty Corporation and chairman of the Vancouver Town Planning Commission, inspected the Spencer property in August and September, 1938. He made an estimate of the land and cultivation, the residence and the out buildings, of the fences and gates, of the garden walls, the driveway and cement walks, of the fish pond, of the tennis court and of the manure pit and arrived at a figure of \$113,464.48 for the whole. He said that the house contained 235,295 cubic feet and that a sum between 33 and 34 cents per cubic foot was fair. He thus fixed the cost of the house at \$80,000.30; he deducted however for depreciation the sum of \$20,800, being 1% per cent per year during 26 years, leaving a net value to-day of \$59,200.30. Macpherson prepared a summary of his valuation and filed it as exhibit J.

Macpherson also indicated on a plan (marked as exhibit K) certain lots in the vicinity of the Spencer property, mentioning, as the case may be, the amount of the assessment or the purchase price. Taking these figures as basis, he estimated the value of the land of the defendant at \$4,500 an acre; he said that he considered this valuation fair and equitable.

In witness's opinion, blocks 129 and 130 being nearer to the beach are worth about \$500 more an acre than the Spencer property.

Macpherson allowed an additional sum of \$1,500 per acre for four acres for the cultivation. I may note in passing that Reeve, in his estimate, allowed a similar sum with regard to four and a quarter acres.

Macpherson said that he was the agent who made the sale of the property to the defendant in August, 1919, for the price of \$25,000. The property at the time consisted of only fifteen lots; it comprises now thirty-three lots. Witness said that he could not recognize to-day the house he had sold in 1919; considerable improvements and enlargements had been made to it since the purchase. According to Macpherson the defendant got her property at a bargain. Canada Permanent Mortgage Corporation, which had acquired the property through foreclosure, asked \$35,000; Mrs. Spencer made an offer of \$25,000 which was accepted. If the defendant had asked witness to list her property for sale, he would have advised her to list it at \$75,000 or \$80,000, if she wished to sell it. The market for large residential properties is limited.

Allwyn Buckley, horticulturist for several years, was gardener for the defendant. A week or so before the trial, he made an inventory of the trees, shrubs and plants in the garden; a copy of his inventory was filed as exhibit M. The prices quoted in this inventory are not his.

Francis B. Williams, horticulturist and gardener, stated that he knew the garden on the Spencer property; he made extensions to it and did some grading; he has done work in the garden at different intervals since 1921.

Williams took cognizance of the inventory prepared by Buckley and he set down in it the cost of the stock at the time of planting and its value in September, 1938, when the inventory was made.

George Dorrell, president of the Vancouver Real Estate Exchange, heard as witness on behalf of the Crown, declared that he had not attempted to determine the replacement cost. He merely considered the marketableness of the property on the date of the expropriation; its market value at the time did not, in his opinion, exceed \$40,000. Witness said he took into consideration the site of the property and all its future possibilities. He believes that the value of real estate in the neighbourhood will decrease owing to the proximity of the airplane hangars.

In cross-examination Dorrell stated that he had not considered the replacement cost, that he does not accept the figures mentioned by the defendant's witnesses in reference thereto and that the cost of replacement of a property does not represent its value.

1939
 THE KING
 v.
 ISABEL
 GERTRUDE
 SPENCER.
 Angers J.

1939
 THE KING
 v.
 ISABEL
 GERTRUDE
 SPENCER.
 Angers J.

Dorrell said that it was not easy to find a willing buyer for the Spencer property or, in fact, for any large residential property.

Witness referred to the Shannon property, containing approximately ten acres and fronting on Granville street; he said that it had cost over \$400,000 and had been sold for \$106,000.

Frederick A. Cleland, real estate broker, vice-president of the Vancouver Real Estate Exchange, called as witness by the plaintiff, testified that he had inspected the Spencer property recently. He placed on it a value of \$42,000 for a sale by a willing vendor to a willing purchaser.

In cross-examination he said that he had taken into consideration the fact that the house had been remodeled. In his opinion, there are very few purchasers for a house of the size of that of the defendant; it is easier to sell small houses.

The offer made by the Crown corresponds exactly with the municipal assessment. No evidence was adduced to establish the relation between the assessment and the real value of real estate in the City of Vancouver. My experience, limited as it may be, has convinced me that municipal assessments are usually lower than the real value. Municipal assessment for taxation purposes may in certain cases assist in arriving at a fair valuation of a property, particularly when evidence has been offered to show the proportion of the assessment to the real value, but it is not in itself a determining factor: *The King v. Turnbull Real Estate Co. et al.* (1); *Dumble v. The Cobourg and Peterborough Railway Co.* (2).

One of the main factors to consider in endeavouring to arrive at a fair valuation of a property is the market value. *Dodge v. The King* (3); *The King v. Macpherson* (4). In the present case, however, the evidence discloses that it is extremely difficult, nay, even practically impossible to determine the market value of the Spencer property on account of its size and character. It is not unique in its kind, but it is not at all common. Demands

(1) (1902) 8 Ex. C.R. 163;
 (1903) 33 S.C.R. 677.

(2) (1881) 29 Grant's Ch. R.
 121, 131.

(3) (1906) 38 S.C.R. 149, 155.
 (4) (1914) 15 Ex. C.R. 215.

for this type and standard of residential property are very limited.

I may note that the market price is not necessarily a conclusive test of the real value: *South Eastern Railway v. London County Council* (1); *Pastoral Finance Association Limited v. The Minister* (2); Cripps on Compensation, 8th ed., p. 182.

Sales of parcels of land in the vicinity have been mentioned and the prices paid therefor in 1937 or 1938 offer a basis to value the land of the Spencer property. In the sales referred to there is nothing however to compare with the Spencer residence; the properties forming the object of these sales differ from the Spencer property either in size, location or character. In these circumstances it seems to me that the only manner in which a value may be set on the Spencer buildings is to figure out the replacement cost and deduct therefrom the depreciation which the buildings now standing have suffered since their erection. The figure thus obtained will, in my opinion, represent the value to the owner at the time of the expropriation, which is the basis of the compensation allowable in cases of compulsory taking: *Federal District Commission v. Dagenais* (3); *Cedars Rapids Manufacturing and Power Co. v. Lacoste et al.* (4); *Pastoral Finance Association Ltd. v. The Minister* (5); *In re Lucas and Chesterfield Gas and Water Board* (6); *Sidney v. North Eastern Railway Co.* (7); *Stebbing v. Metropolitan Board of Works* (8); *The King v. Quebec Skating Club* (9); *The King v. Wilson* (10); Cripps on Compensation, 8th ed., p. 174; Nichols on Eminent Domain, 2nd ed., vol. 1, p. 630, No. 208.

The defendant is claiming a sum of \$7,500 for depreciation on the contents of the residence and a sum of \$5,000 for removal expenses and expenses which will be incurred on the acquisition of other residential premises.

Col. Spencer stated that most of the curtains and rugs, all made to order, would not suit and could not be used in another house. As the defendant had not yet selected another residence on the date of the trial, it is impossible to say with any amount of precision what rugs and cur-

1939

THE KING

v.

ISABEL
GERTRUDE
SPENCER.

Angers J.

(1) (1915) 2 Ch. 252, 258.

(6) (1909) 1 K.B. 16.

(2) (1914) A.C. 1083, 1087, 1088.

(7) (1914) 3 K.B. 629, 637.

(3) (1935) Ex. C.R. 25, 31.

(8) (1870) L.R., 6 Q.B. 37.

(4) (1914) A.C. 569, 576.

(9) (1931) Ex. C.R. 103.

(5) (1914) A.C. 1083, 1087.

(10) (1914) 15 Ex. C.R. 283.

1939
 THE KING
 v.
 ISABEL
 GERTRUDE
 SPENCER.
 Angers J.

tains will not fit in the new house. There will undoubtedly be some loss the exact amount whereof it is, with the evidence of record indefinite and incomplete as it is, difficult to determine with any accuracy.

I believe that the defendant has a right to be compensated for the expense which she will necessarily incur for moving: Cripps on Compensation, 8th ed., p. 184; Nichols on Eminent Domain, 2nd ed., p. 697; Browne and Allan, Law of Compensation, 2nd ed., pp. 102 (in fine) and 103. Evidence on this subject, however, is lacking and I do not think, in the circumstances, that I can grant any indemnity in this connection.

After a careful perusal of the evidence adduced I have reached the conclusion that a sum of \$85,860 will be a fair and adequate compensation to the defendant for the land and real property expropriated as well as for all damages arising out of the expropriation, the said sum being made up as follows:

| | |
|---|----------|
| 5.86 acres of land at \$3,500 an acre..... | \$20,510 |
| house \$72,000 less depreciation, viz., \$24,000..... | 48,000 |
| garage and chauffeur's living quarters..... | 1,600 |
| greenhouses | 1,200 |
| barn and chicken house | 160 |
| entrance gates | 1,400 |
| iron fence | 500 |
| garden stone walls | 5,000 |
| driveway and cement walks | 800 |
| tennis court and wire mesh fence | 1,600 |
| trees, shrubs, hedges, flowers, etc..... | 5,000 |
| fish pond | 30 |
| manure pit | 60 |
| | \$85,860 |

I think fair and reasonable to grant to the defendant the customary additional allowance of 10% to cover incidental costs and charges (depreciation of contents of house, removal, acquisition of new premises, etc.) to which the defendant will unavoidably be subject as a direct consequence of the expropriation.

The defendant, through her counsel, declared that, as she had been allowed to remain in possession of the property after the expropriation, she agreed to withdraw her claim for interest from the date of the expropriation to the date of the vacation of the property.

There will be judgment as follows:

1. The land and real property herein expropriated are declared vested in His Majesty the King;

2. The compensation for the land and real property so expropriated and for all damages arising out of or resulting from the expropriation is hereby fixed at the sum of \$94,446 with interest from the date on which the defendant had to give up possession of the property, such date to be established before the Registrar on the settlement of the minutes of the judgment;

3. The defendant, upon giving to the Crown a good and valid title to the said land and real property, free from all mortgages, charges and encumbrances whatsoever, is entitled to recover the said sum of \$94,446, with interest as aforesaid;

4. The defendant is also entitled to the costs of the action.

Judgment accordingly.

1939
THE KING
v.
ISABEL
GERTRUDE
SPENCER.
Angers J.