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meaning for which the appellant contends been correct, there was no need to alter the words "a charge" in sub-clause (*a*) into the words "a claim" in sub-clause (*b*).

For these reasons, in my view, the appeal fails and should be dismissed.

WILLMER L.J. I agree so entirely with what my Lords have said that I find it quite unnecessary to add anything further.

Application dismissed.

Solicitors: *S. Sydney Silverman; Joynson-Hicks & Co.*

F. R. D.

[COURT OF APPEAL.]

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[Ref./141/1955.]

Compulsory Purchase—Compensation—Goodwill, loss of—Method of assessment.

Costs—Lands Tribunal—Compensation for compulsory purchase—Legal and accountancy expenses incurred in preparation of claim—Whether recoverable as part of compensation—Lands Tribunal Act, 1949 (12 & 13 *Geo.* 6, *c.* 42), *s.* 3 (5), *Sch. I, Pt. II, para.* 5 (1) (2) (3)—*Lands Tribunal Rules*, 1956 (*S.I.* 1956, *No.* 1734), *r.* 49 (1) (2).

Compulsory Purchase—Compensation—Costs of claim—How far recoverable as part of compensation—Lands Tribunal.

On January 14, 1952, an acquiring authority served on an elderly optician in indifferent health a notice to treat in respect of the compulsory acquisition of his freehold business premises which he had occupied for 40 years. He prepared his claim for compensation in response to the notice to treat, incurring in the process legal and accountants' expenses as well as surveyors' and valuers' fees. On June 6, 1955, he moved to new leasehold premises a mile away, expended capital in converting them into a superior establishment, and continued his business with the added help of a qualified assistant.

The reference of his claim to the Lands Tribunal was not heard until February, 1957, by which date there were available for consideration by the tribunal the figures of the gross takings and net profits of the business in the new premises during the preceding one and a half years, which figures showed that the earnings in the new premises were substantially higher than those in the old, and were increasing. The particulars of claim included (*a*) a claim for damages to the goodwill of his business and (*b*) the item for legal and accountants' costs incurred in preparing his claim.

The tribunal found, inter alia, that the claimant had not at any material time any intention of selling his business; that there had been some loss of goodwill; and that the goodwill of a business increased in value the longer it was carried on at the same premises

or near thereto. The tribunal awarded £750 for damage to goodwill, the figure being arrived at by comparing the capital value of the business at the old premises (calculated by multiplying by three years' purchase the average net profits for the three years prior to the move) with the capital value of the business at the new premises (calculated by multiplying by one and a half years' purchase the average of the net profits for 1955/56 and the estimated net profit for 1956/57). The tribunal included the legal and accountants' expenses as part of the total compensation awarded.

On appeal by the acquiring authority against those items of the award:

Held (1) that the tribunal had not erred in law in the method applied for ascertaining the value of the lost goodwill; the loss of goodwill was the loss of a capital asset which could have been realised at any time, and the claimant was entitled to be compensated for that loss, irrespective of the fact that no sale had taken place or was in contemplation at the date of the hearing; the duty of the tribunal was to estimate the capital value of the business in the new premises immediately after the move; but they had rightly had regard to the known facts, including the increased rate of profit at the new address, which were available at the date of the hearing; and the question as to the multiplier to be adopted was essentially a question of fact for the tribunal, having regard to all the circumstances of the case.

Bwllfa & Merthyr Dare Steam Collieries (1891) *Ltd.* v. *Pontypridd Waterworks Co.* [1903] A.C. 426; 19 T.L.R. 673, applied.

(2) That the legal and accountancy costs, like surveyors' and valuers' fees, were incurred as a direct consequence of being dispossessed and were, accordingly, recoverable as part of the substantive compensation. Nothing in the provisions as to costs in section 3 (5) of the Lands Tribunal Act, 1949,[1] nor the wider words of rule 49 of the Lands Tribunal Rules, 1956,[2] justified taking those costs out of the only place where they could properly find room before a reference, namely, the claim itself, and making them part of the costs of a reference; nor was there any reason why a claimant should suffer by having them treated on the same basis as costs incurred before action brought and reduced on taxation; *a fortiori*, since such costs might be incurred in preparing a claim in compliance with a notice to treat, which claim might, in the event of agreement between the claimant and the acquiring authority, never become the subject of a reference to the tribunal.

Skinners' Company v. *Knight* [1891] 2 Q.B. 542 distinguished.

APPEAL by case stated from a decision of the Lands Tribunal.

The facts proved or admitted at the hearing before the Lands Tribunal and set out in their decision, supplemented by further

[1] The Lands Tribunal Act, 1949, s. 3 (5): "Subject to the following "provisions of this section, the Lands "Tribunal may order that the costs "of any proceedings before it incurred "by any party shall be paid by any "other party and may tax or settle "the amount of any costs to be paid "under any such order or direct in "what manner they are to be taxed."

[2] The Lands Tribunal Rules, 1956, r. 49: "(1) Except in cases to "which the provisions of subsection "(1), (2) or (3) of section 5 of the "Act of 1919 apply, the costs of and "incidental to any proceedings shall "be in the discretion of the Tribunal. "(2) If the Tribunal directs that the "costs of a party to proceedings shall "be paid by any other party thereto, "the Tribunal may settle the amount "of costs by fixing a lump sum, "or it may direct that the costs shall "be taxed by the Registrar on a "specified scale of the scales of costs "prescribed by the Rules of the "Supreme Court or by the County "Court Rules as the case may be."

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additional facts set out in the case stated, were as follows: The claimant, Bertram Tobin, claimed compensation in respect of the compulsory acquisition by the acquiring authority, the London County Council, under the Stepney and Poplar Reconstruction Area (Ocean Street Extension) Compulsory Purchase Order, 1950, of the premises owned and occupied by him for the purposes of his business as an optician at 382, Mile End Road. Notice to treat was served on January 14, 1952, but the premises were not vacated by the claimant until June 6, 1955, when he moved his business into new premises at 129, Whitechapel Road. Notice of reference to the Lands Tribunal was given on December 30, 1955.

The premises at 382, Mile End Road were a three-storey building which had suffered from war damage and stood in an area which had been so considerably damaged by enemy action that it had been the subject of a declaratory order under the Town and Country Planning Act, 1947.

At the date of the notice to treat, the upper floors were disused and a temporary shop front had been installed. The premises had at one time been occupied by the claimant's father, who was a jeweller, but after the claimant (who was born at 382, Mile End Road, in 1890) had qualified as an optician in 1912 he had carried on his practice on the premises, at first in conjunction with his father's business but later and until the date of acquisition exclusively.

The premises provided on the ground floor a waiting room, a fitting room, a sight-testing room and office accommodation, and the claimant employed in his business his wife who, though not professionally qualified, was a skilled dispenser; a junior assistant who remained until he had qualified; and part-time clerical assistance.

The claimant had there a successful and long-established business which he managed without any qualified assistance, though in 1951 he suffered an attack of thrombosis which necessitated his obtaining a locum for a time; and he was warned by his doctor to take care and go easily.

During the period between the date of notice to treat and his removal the claimant, with the assistance of the acquiring authority, endeavoured to obtain an alternative site in proximity to the address at which he had been for so many years, but no suitable accommodation was available, and eventually he obtained a lease for 18 years at £400 per annum of 129, Whitechapel Road, just over a mile to the west of his original premises.

No. 129, Whitechapel Road was a four-storey building and stood in a row of shops. It had formerly been a wool warehouse and expenses were necessarily incurred in converting the ground floor into suitable premises for the claimant's business. A total sum of about £3,000 was spent by the claimant, which sum included a premium of £600, £500 on what were admitted by the acquiring authority to be necessary repairs and the remainder

on fitting out and equipping the premises. At these new premises there were, in addition to waiting and fitting rooms, two sight-testing rooms; and a qualified assistant was employed in place of the learner who had left.

The floors above the ground floor at 129, Whitechapel Road, which were agreed to have an annual value of £140, were not used by the claimant, who had endeavoured unsuccessfully to let them.

The amended particulars of claim which were the subject of reference to the tribunal were [so far as is relevant to the appeal] as follows:

"2. (*c*) Legal charges and surveyors' fees incurred in acquiring new premises £64 0s. 0d.: (*d*) Damage of profits and goodwill £3,000.

"3. Expenses of taking advice on and preparing claim—lawyers', accountants' and surveyors' and other such expenses in connection with the sale: *Particulars so far as available*: Valuers' fees £108 3s. 0d.; Accountants' fees £63 0s. 0d."

The details of valuation in support of the claim to 2 (*d*) were as follows: "Value of business before acquisition:

"Profits before rent and rates	£1,575	
"Less rent and rates	£200	
	£1,375	
"Yearly Profit	3	
"say	£4,000	£4,000
"*Deduct value after removal*		
"Net profits after first year as before	£1,575	
"Less rent and rates, including amortisation of premium and initial repairs	£500	
	£1,075	
"Yearly Profit	1	£1,000
"CLAIM		£3,000."

The gross receipts of the claimant's business in each of the years ending on March 31 were as follows:

At 382, Mile End Road	
1952/1953	£4,135
1953/1954	£4,203
1954/1955	£4,739
1955/1956 (two months)	£691
At 129, Whitechapel Road	
1955/1956 (ten months)	£5,262
1956/1957 (ten months)	£5,947.

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The tribunal found further that if the additional business which had been done at 129, Whitechapel Road, was to be done, the employment of a qualified assistant was necessary, but that the employment of such an assistant enabled the claimant to give effect to his doctor's advice; that the claimant had no intention at any material time of selling his business; and that the goodwill of a business, which was an asset which could be realised at any time, increased its value the longer the business was carried on at the same premises or near thereto.

On the claim under paragraph 2 (*c*) [supra] it was admitted by Mr. Stewart-Brown, for the acquiring authority, that having regard to the decision in *Harvey* v. *Crawley Development Corporation* [3] he could not resist that claim in so far as it represented £32 9s. 0d. legal fees and £18 7s. 6d. surveyor's fees in respect of the acquisition of 129, Whitechapel Road, or in respect of surveyor's fees amounting to £13 2s. 6d. for a survey of premises at 215, Whitechapel Road, which were rejected on the surveyor's report, if the tribunal were satisfied that it was reasonable to have incurred that expense; but he desired to reserve his rights in view of a possible appeal in the *Crawley* case. After hearing the evidence of the claimant and his surveyor in regard to this abortive survey, the tribunal were satisfied that it was an expense reasonably incurred, and awarded the sum of £64 claimed.

It was contended by Mr. Stewart-Brown, for the acquiring authority, that the expenses under paragraph 3 [supra] should be dealt with as part of the costs of the reference in the same way as instructions for writ in an action for damages. That argument appeared to the tribunal to be based on a false analogy. The defendant in an action did not invite the plaintiff to institute proceedings, while the acquiring authority in their notice to treat demanded "... from you and each and every of you the "particulars of your respective estates and interests in the lands "so required as aforesaid together with all charges and interests "to which the same are subject and of the claims made by you "and each of you in respect thereof which several particulars "should be stated in ONE of the accompanying forms of claim "and delivered to the solicitor of the council."

The tribunal held that nothing could be more reasonable on receipt of such a demand than to obtain professional advice and so incur expense which was the direct result of the service of notice to treat. Those expenses were incurred irrespective of whether the question of compensation was ever referred at all. Moreover, the claimant might on a reference not be awarded costs or might indeed be ordered to pay the costs of an acquiring authority if the amount awarded was less than the sealed offer, but no sealed offer would have been made unless a claim were first formulated. The tribunal were satisfied, therefore, that the costs incurred by a claimant in formulating his claim were proper

[3] [1957] 1 Q.B. 485; [1957] 2 W.L.R. 332; [1957] 1 All E.R. 504.

subjects of compensation. It was admitted by Mr. Scrivens for the claimant that the sums mentioned in the claim included charges in respect of matters subsequent to the reference and it was agreed between the parties that the appropriate fees would be legal £21, accountants £5 5s. 0d. and surveyors the appropriate scale fee on £800, the agreed value of the freehold, plus the amount awarded by the tribunal in respect of item 2 (*d*).

On the claim under paragraph 2 (*d*) [supra] the tribunal stated that that claim was alleged to represent the loss of goodwill consequent on the removal to the new premises. It was contended that an established one-man business in freehold premises would command three years' purchase of the average profits, whereas a new business in leasehold premises and a business which involved the employment of a qualified assistant would command only one year's purchase of the profits. The claimant's surveyor for the purpose of his valuation had assumed that the profits before deducting rent and rates would remain constant and that the difference in the new profits was therefore wholly attributable to the increased rent. That appeared to the tribunal to be really an attempt to compensate the claimant for his increased rent which it was clear from the authorities (see *per* Denning L.J. in *Harvey* v. *Crawley Development Corporation* [4]) could not be done. It had to be assumed that the increased rent was justified by the increased business capacity of the new premises, and indeed it was clear from the evidence that the average gross takings for the two years subsequent to removal were £6,725 while those for the two years prior to removal were £4,472.

However, the business which was being carried on at the new premises differed from that formerly carried on by the claimant in regard not only to the premises and their situation but also in the employment of a fully qualified assistant.

The tribunal found that a direct comparison was therefore impossible, and that what they had to attempt to evaluate was the loss which the claimant had suffered in the goodwill which was attached to the business carried on by him in his premises at 382, Mile End Road. Had he been able to acquire premises in its immediate vicinity it was obvious that the loss would have been negligible, while if he had been forced to re-establish himself in an entirely different part of London, little or none of the goodwill would have followed him to his new premises.

It was contended on behalf of the claimant that the correct method of assessing his loss was by comparing the capital value of the old business in the acquired premises, arrived at by taking three years' purchase of the average net profits for the last two years—viz., 1953–54 and 1954–55—with the capital value of the new business in the new premises, arrived at by taking one year's purchase of the average of the net profit for 1955–56 and the

[4] [1957] 1 Q.B. 485, 493–4.

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estimated net profit for 1956–57. The tribunal approved that method in principle, but its application necessitated their making a number of adjustments to the figures in the accounts in order to make a fair comparison between the net profits of the old business and those of the new one. In valuing the old business they decided that the correct method was to multiply the average net profit by three years' purchase, as contended for by the claimant, but they adopted the average profits for three years as contended for by the London County Council. In valuing the new business the tribunal were unable to accept the evidence of the claimant's advisers that it was unsaleable, or worth at most only one year's purchase. Having regard to their finding that a not inconsiderable part of the goodwill had remained, and to the fact that the net profits of the new business had been substantially higher than those of the old business and according to their calculations had been on the increase, they considered these views to be unduly pessimistic. They were also mindful of the fact that the surveyor for the claimant, in an earlier calculation which he discarded but which was communicated to the London County Council by Silkin & Silkin (the solicitors to the claimant) in a letter of February 16, 1956, valued the new business at two years' purchase of the net profit. In the light of all that evidence the tribunal came to the conclusion that one and a half years' purchase was the appropriate multiplier and they applied that figure. In the result, they calculated the loss sustained under that head of the claim at £750.

The sealed offer having been read and the amount thereof being less than the sum awarded, the tribunal ordered that the acquiring authority should pay to the claimant his costs to be agreed or in default of agreement taxed on the High Court scale.

The questions on which the decision of the court was desired were whether on the findings of fact the tribunal came to a correct decision in law in determining (i) that the legal expenses and accountants' fees incurred by the claimant in preparing a claim in response to the notice to treat formed a proper subject of compensation and were correctly included in their award; and (ii) that the claimant was entitled to the sum of £750 in respect of his claim for damage to the goodwill of his business consequent on the compulsory acquisition of his business premises.

R. D. Stewart-Brown Q.C. and *K. F. Goodfellow* for the London County Council.

William Scrivens for the claimant.

The following cases were cited during the course of argument: *Horn* v. *Sunderland Corporation* [5]; *Zitver* v. *Edmonton Corporation* [6]; *Société Anonyme Pêcheries Ostendaises* v. *Merchants' Marine Insurance Co.* [7]; *Skinners' Co.* v. *Knight* [8]; *Bwllfa &*

[5] [1941] 2 K.B. 26; 57 T.L.R. 404; [1941] 1 All E.R. 480.
[6] (1954) 4 P. & C.R. 365.
[7] [1928] 1 K.B. 750; 44 T.L.R. 270.
[8] [1891] 2 Q.B. 542.

Merthyr Dare Steam Collieries (1891) Ltd. v. *Pontypridd Waterworks Co.*[9]; *Tull's Personal Representatives* v. *Secretary of State for Air.*[10]

Cur. adv. vult.

March 2. The following judgments were read:

MORRIS L.J., saying that the facts which gave rise to the claim of the claimant were clearly recorded in the decision of the Lands Tribunal and in the case stated, and that he did not propose to recount them at length, continued:

The claimant's premises at 382, Mile End Road, which he owned and occupied for the purposes of his business as an optician, became subject to a compulsory acquisition order. A notice to treat was served on him on January 14, 1952, but he did not vacate until June 6, 1955, when he moved his business into new premises at 129, Whitechapel Road. Notice of reference to the Lands Tribunal was given on December 30, 1955. The hearing before the tribunal was in February, 1957, and the decision of the tribunal is dated June 14, 1957. The further amended particulars of claim, which were the subject of reference to the tribunal, included many items, but only two of these are now in question. There was one item under which £3,000 was claimed for "Damage of profits and goodwill." The claim was alleged to represent the loss of goodwill consequent on the removal to the new premises.

The Lands Tribunal dealt with the claim in their decision in the following words [His Lordship read that part of the decision (supra) dealing with paragraph 2 (*d*) of the claim for loss of goodwill and continued]: The question of law as stated by the Lands Tribunal is whether on their findings of fact they came to a correct decision in law in determining that the claimant was entitled to the sum of £750 in respect of his claim for damage to the goodwill of his business.

It is to be observed that the approach of the Lands Tribunal involved ascertaining the "capital value of the old business" in the premises which were acquired and comparing it with the "capital value of the new business in the new premises." In their context the phrases "capital value" clearly refer to the value of the goodwill and only to that. It does not seem to me that this is wrong in principle. The claimant was compelled to move. He was compelled to relinquish the capital asset, namely, the goodwill which had resulted from his having built up an established business in his own premises at 382, Mile End Road. If, because of his enforced uprooting, his new capital asset, namely, the value of the goodwill of his business in the new premises, has been diminished, then he has suffered a loss. It is said, however, that the method of approach of the Lands Tribunal is erroneous because it assumed a sale of the

[9] [1903] A.C. 426; 19 T.L.R. 673.

[10] [1957] 1 Q.B. 523; [1957] 2 W.L.R. 346; [1957] 1 All E.R. 480.

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goodwill of the business in the new premises at or about the date of the hearing before the Lands Tribunal, and it is said that as no sale had taken place or was in prospect the award compensated the claimant for a loss which he had not suffered nor was about to suffer. The Lands Tribunal have found that the goodwill of a business, which is an asset which can be realised at any time, increases in value the longer the business is carried on at the same premises or near thereto. But the Lands Tribunal could not peer into the future and could only make a reasonable comparison between what the claimant possessed when he was forced to leave his premises and what he later possessed. He had been at the old premises for over 40 years, and had had no intention of leaving them; his goodwill was valued on the basis of three years' purchase of his average net profits. The Lands Tribunal were comparing like with like when they endeavoured to assess the value of the goodwill in the new premises which again the claimant had no intention of leaving. Had the Lands Tribunal been dealing with the claim in December, 1955, at the time of the reference to them, their task would have been indeed difficult. As they were dealing with the claim in February and June, 1957, it was possible for the Lands Tribunal to have regard to the fact that the business had been continued and was continuing and to the known facts of performance and achievement at the new address; it was entirely proper for the Lands Tribunal to take these known facts into calculation (see *Bwllfa and Merthyr Dare Steam Collieries (1891) Ltd.* v. *Pontypridd Waterworks Co.*[1]). The difficult task of the tribunal was to decide the number of years' purchase to apply in the case of the business at its new address. After all the years at the old address three years' purchase was taken. It might have been that immediately after the hearing or after the decision of the tribunal the claimant might have died. What was the appropriate number of years' purchase? It seems to me that it is only accidental that at the date of the hearing the claimant had been in the new premises just over one and a half years and that the tribunal took one and a half years' purchase. It may be that the tribunal were of the opinion that there would have to be many more years of occupancy and trading activity before the goodwill could be sold on the basis of more than one and a half years' purchase. But the question as to the multiplier to be taken, namely, the number of years' purchase, was essentially a question of fact for the tribunal, and, unless they have erred in principle, then it is not for this court to say that the decision is wrong in law. It may be that a different multiplier could have been taken and that the resultant figure for loss of goodwill would have been less; but the difficult task of fixing the appropriate number of years to be taken was essentially a matter of judgment having regard to the facts,

[1] [1903] A.C. 426; 19 T.L.R. 673.

figures and features of the case. It is said that no sale had taken place at the date of the hearing and that none was in prospect. That is perfectly correct. But those facts were well known to the Lands Tribunal and must have been in their minds. In spite of the known facts as to the business, it had been argued that the goodwill was not saleable; but the tribunal rejected that view.

It is further said that, though it would have been reasonable to give compensation on the basis that there was a risk that the goodwill of the business in the new premises might have to be sold before it was sufficiently long established for the value of the goodwill thereof at least to equal the value of the goodwill of the business in the old premises at the date of the notice to treat, yet the award of £750 as calculated was erroneous (*a*) because it took no account of the likelihood or unlikelihood of such a sale and (*b*) because it took no account of the fact that the claimant was receiving greater profits from the business at the new premises than he had at the old and would continue to do so until a sale took place. But it does not seem to me that the Lands Tribunal neglected to take account of any of these matters. They set out in the special case that the claimant had, at all material times, no intention of selling his business. His net profits were higher than before and were on the increase. But it might nevertheless happen that at any time after the hearing before the tribunal the business would have to be sold. It would not be reasonable for the tribunal to make speculative calculations as to the future; they had to do the best they could at the time when the matter was before them. At that time the position was, as their decision shows, that "a not inconsiderable part of the goodwill has remained." That involved that some goodwill had not remained. A consequence would be that there might be some loss of a capital asset as a result of the enforced move. If loss were caused to the claimant he ought not to be deprived of receiving proper compensation for it on the supposition that if he survived, and if he worked diligently to make up for what he had lost, then he could at some future time eliminate it. There is, I think, force in the view that it would not be correct simply to proceed on the basis of what the goodwill would fetch if there were a forced sale at the time of the hearing before the Lands Tribunal. Some reasonable consideration would have to be given to the hope or expectation that any sale would probably be deferred. But it would not follow that the time would speedily be reached when some higher multiplier than that fixed would be appropriate; it might take some years before two years' purchase would be appropriate to compare with the calculation of three years' purchase in reference to the business in its old location. It does not seem to me to be shown that a higher multiplier than one and a half would necessarily have been taken if the Lands Tribunal had attempted to speculate as to the capital value of the goodwill on various

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future dates in the not too distant future. The acquiring authority gained by reason of the fact that the reference was not heard until February, 1957, by which date it was known that the business was continuing, was thriving, and was on the upgrade. But it might have proved unfair to the claimant if the Lands Tribunal had only proceeded on the assumptions (i) that the claimant would go on living for some time, (ii) would go on building up his business, and (iii) that the business would become progressively remunerative. If all these things do happen, it may still take some time before the goodwill of the new business becomes equal in value with the goodwill of the old. The tribunal used the knowledge derived from ascertained experience, but they had to do their best without basing themselves on every conceivable assumption which, if not falsified by later events, might tend to diminish the measure of the claimant's loss. It is true that he was making larger net profits than before. But to some extent that was a result of the fact that he had invested new capital in the business after its move to new premises and to the fact that the business carried on at the new premises differed from that carried on at the old.

A point was taken that the Lands Tribunal should not have referred to the claimant's business at 129, Whitechapel Road, as a "new business." But the result has in no way depended upon any particular description or phrase but upon the facts themselves as set out in the decision and the special case. The claimant has continued his business, but as a result of the enforced move his business has certain changed features. Before, it was an established business in freehold premises. After the move the business was in leasehold premises. "A not inconsiderable part of the goodwill" remained; some was lost. But when the change took place some capital was expended in fitting out and equipping the new premises. Furthermore, a qualified assistant was employed. This circumstance did, however, bring the claimant a measure of relief which, for health reasons, was welcome to him. He was, however, fortunate in that in the new premises his net profits were substantially higher than they had been before he moved and they showed a progressive increase. It seems to me, however, that the increased profits must to some extent have resulted from his investment of capital. All these and other circumstances were weighed by the Lands Tribunal. There were features of the situation which were rather special; some of these tended to support a claim, while others tended to reduce or eliminate a claim. The claimant may or may not have been fortunate in the result, but I am not persuaded that it is shown that there was error in law in the method of approach.

The other item which is now in question is one of £26 5s. 0d. which, as to £21, related to the expense of taking legal advice in connection with the preparation of the claim for compensation after the receipt of the notice to treat, and as to £5 5s. 0d.

accountancy expenses similarly incurred. This matter was dealt with by the Lands Tribunal as follows [His Lordship read from the decision (supra) of the tribunal under paragraph 3, relating to the expenses under consideration, and continued]: It was submitted by Mr. Stewart-Brown that it was undesirable that legal costs incurred in preparing a claim should be regarded as forming part of the compensation to be awarded. He submitted that such costs could be recoverable as part of the costs of a reference, and as a matter of practical convenience he submitted that the Lands Tribunal was not a suitable tribunal to decide as to what costs had been properly incurred or as to what allowances should be made. He submitted that these questions could better be dealt with on a taxation of costs, and, further, that legal costs incurred in making a claim for compensation should not be regarded as capable of being a part of the compensation being claimed. He submitted that any costs properly incurred could be regarded as being costs of a reference, in the same way as costs incurred before an action is brought may be allowed if the taxing master in his discretion considers that they were necessary or proper for the attainment of justice (see *Société Anonyme Pêcheries Ostendaises* v. *Merchants' Marine Insurance Co.*[2]

It is provided by section 3 (5) of the Lands Tribunal Act, 1949, as follows: " Subject to the following provisions of this section, " the Lands Tribunal may order that the costs of any proceedings " before it incurred by any party shall be paid by any other " party and may tax or settle the amount of any costs to be paid " under any such order or direct in what manner they are to be " taxed." In Part II of the First Schedule to the Act, paragraph 5 (1) reads as follows: " Where the acquiring authority has made an " unconditional offer in writing of any sum as compensation to any " claimant and the sum awarded by the Lands Tribunal to that " claimant does not exceed the sum offered, the Lands Tribunal " shall, unless for special reasons the Lands Tribunal thinks " proper not to do so, order the claimant to bear his own costs and " to pay the costs of the acquiring authority so far as such costs " were incurred after the offer was made." Then sub-paragraph (2) is: " If the Lands Tribunal is satisfied that a claimant has " failed to deliver to the acquiring authority a notice in writing " of the amount claimed by him giving sufficient particulars and " in sufficient time to enable the acquiring authority to make a " proper offer, the foregoing provisions of this section shall apply " as if an unconditional offer had been made by the acquiring " authority at the time when in the opinion of the Lands Tribunal " sufficient particulars should have been furnished and the claim- " ant had been awarded a sum not exceeding the amount of such " offer. The notice of claim shall state the exact nature of the " interest in respect of which compensation is claimed, and give

[2] [1928] 1 K.B. 750; 44 T.L.R. 270.

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" details of the compensation claimed, distinguishing the amounts " under separate heads and showing how the amount claimed " under each head is calculated, and when such a notice of claim " has been delivered the acquiring authority may, at any time " within six weeks after the delivery thereof, withdraw any notice " to treat which has been served on the claimant or on any other " person interested in the land authorised to be acquired, but shall " be liable to pay compensation to any such claimant or other " person for any loss or expenses occasioned by the notice to treat " having been given to him and withdrawn and the amount of " such compensation shall, in default of agreement, be deter- " mined by the Lands Tribunal. (3) Where a claimant has made " an unconditional offer in writing to accept any sum as com- " pensation and has complied with the provisions of the last " preceding subsection, and the sum awarded is equal to or " exceeds that sum, the Lands Tribunal shall, unless for special " reasons the Lands Tribunal thinks proper not to do so, order " the acquiring authority to bear their own costs and to pay the " costs of the claimant so far as such costs were incurred after " the offer was made."

The question, therefore, arises whether, when compensation is being claimed, an amount to cover the legal costs of preparing the claim can be included. Whether in a particular case it is necessary to have legal assistance in preparing a claim or the services of an accountant, will be a matter for decision having regard to the circumstances of the particular case. But if such assistance and such services have properly and reasonably been obtained, then I see no reason why the expense incurred should not be included as part of the compensation claimed. After a notice to treat is served the acquiring authority wish to know what claims are made upon them. If they deem the claims to be reasonable they will meet such claims and no reference will be necessary. If legal or other assistance is necessary, and if, in consequence, expense is properly incurred, then, in my judgment, it is appropriate to include the expense as one item in the claim for compensation. If all items of a claim were agreed except an item for such expense, and if the acquiring authority disputed both the necessity for incurring it and also the amount of it, then it seems to me that the dispute could only be resolved by reference to the Lands Tribunal. So, also, if the acquiring authority after receiving a notice of claim decided (see paragraph 5 (2), which I have just read, of Part II of the First Schedule to the Lands Tribunal Act, 1949) to withdraw the notice to treat which it had served, the acquiring authority would be liable to pay compensation for any loss or expense occasioned by the notice to treat having been given and withdrawn. Such loss or expense might in some cases include expense properly incurred in seeking professional advice. In default of agreement there would have to be a reference to the Lands Tribunal.

It is provided in rule 49 (1) and (2) of the Lands Tribunal Rules, 1956, as follows: "(1) Except in cases to which the "provisions of subsections (1), (2) or (3) of section 5 of the "Act of 1919 apply, the costs of and incidental to any pro- "ceedings shall be in the discretion of the Tribunal. (2) If "the Tribunal directs that the costs of a party to proceedings "shall be paid by any other party thereto, the Tribunal may "settle the amount of costs by fixing a lump sum, or it may "direct that the costs shall be taxed by the Registrar on a "specified scale of the scales of costs prescribed by the Rules "of the Supreme Court or by the County Court Rules as the "case may be." It is said that the costs incurred in preparing a claim could be regarded as costs of and incidental to any proceedings. But when a claim is presented following on the request contained in a notice to treat, it may be the hope of both parties that there never will be "proceedings" before the Lands Tribunal. The reason why the acquiring authority ask for a claim to be presented is so that if possible they can amicably agree as to the amount of compensation and so settle all outstanding matters.

Mr. Stewart-Brown referred to the decision in *Skinners' Co.* v. *Knight*,[3] where it was decided that under the wording which was used in section 14 of the Conveyancing and Law of Property Act, 1881, the "compensation" for breach of covenant which a lessee was liable to pay did not include the cost incurred by the lessor in consulting and employing a solicitor and surveyor in respect of the preparation of the notice required by section 14. Fry L.J. said[4]: "With regard to the word 'compensation' we "incline to the view that the word 'damages' was not used "because that is most appropriate to the compensation for a "breach when ascertained by the verdict of a jury or the judg- "ment of a court; but that compensation under the section in "question is to be measured by the same rule as damages in "an action for the breach. But whether this be so or no, we "are clearly of opinion that the expenses in question are not "payable as compensation for the breach of the covenant. They "arise, not from the breach of the covenant, but solely from the "fetter which the wisdom of the legislature has imposed on the "enforcement of the cause of action arising from that breach."

In the present case the position is quite different. The acquiring authority wished to know what sums were claimed so that if they agreed to pay such sums there would be no outstanding claims. If a claimant could show that he had incurred expense in obtaining professional help, and that it was reasonable for him to have incurred it, and that the figure of his expense was reasonable, then the time for him to ask to be reimbursed was when he responded to the invitation contained in the notice to treat. The incurring of the expense would be a direct consequence of being dispossessed and of being asked to state the

[3] [1891] 2 Q.B. 542.

[4] Ibid. 545.

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amount of the compensation claimed on account of such dispossession. It is to be observed that no question is raised in regard to the fees of a valuer or surveyor. But if such fees, which include fees for assessing the loss of goodwill, are to be regarded as claimable as compensation, it seems difficult to understand why legal or accountancy fees (always provided they are deemed necessary and are properly incurred) should not similarly be regarded as items claimable as compensation.

In my judgment, the Lands Tribunal were in law entitled to hold that the legal expenses and accountants' fees incurred by the claimant formed a proper subject of compensation; accordingly, such fees were correctly included in their award.

WYNN-PARRY J. Two questions arise for consideration. The first is whether, and, if so, to what extent, the claimant suffered damage to the goodwill of his business by reason of his having to move his business from 382, Mile End Road, as a result of the compulsory acquisition of those premises by the acquiring authority. The second question is whether the legal costs incurred by the claimant in putting forward his claim following the notice to treat should be treated as part of the compensation payable to him in respect of the compulsory acquisition of the old premises or should be treated as part of the costs of the reference to the Lands Tribunal.

As regards the first question, the Lands Tribunal found that, as a result of moving from 382, Mile End Road, the claimant lost part of the goodwill of his business. That is a finding of fact which we cannot disturb. I would add that, in my view, it is a conclusion which was virtually inevitable. The tribunal have quantified the loss at £750. They have set out in their decision the method by which they have arrived at this figure, and the real question is whether, in adopting this method, they have misdirected themselves. Only if they have done so can this court interfere with their finding.

The method applied by the tribunal involved first ascertaining the capital value of the business in the old premises immediately before the transfer; then ascertaining the capital value of the business in the new premises; and then comparing the two. In my judgment, that was a perfectly proper method to apply. As regards the capital value of the business in the old premises, this was ascertained by taking three years' purchase of the average net profits of the business for the last three years. With that I agree. The capital value of the business in the new premises was ascertained by taking one and a half years' purchase of the average of the net profit for 1955–56 and the estimated net profit for 1956–57. The tribunal properly took into account the difference in the nature of the two sets of premises, their respective situations, and the fact that at the new premises a fully qualified assistant is employed.

In the course of their reasoning which led up to the multiplier of one and a half being chosen, the tribunal in their decision said this: "In valuing the old business we have decided that the "correct method is to multiply the average net profit by three "years' purchase as contended for by the claimant, but we have "adopted the average profits for three years as contended for "by the London County Council. In valuing the new business "we are unable to accept the evidence of the claimant's advisers "that it was unsaleable, or worth at most only one year's pur-"chase. Having regard to our finding that a not inconsiderable "part of the goodwill has remained, and to the fact that the net "profits of the new business have been substantially higher than "those of the old business, and, according to our calculations, "have been on the increase, we consider these views to be unduly "pessimistic. We are also mindful of the fact that [the "claimant's surveyor], in an earlier calculation which he dis-"carded but which was communicated to the London County "Council by Silkin & Silkin in a letter of February 16, 1956, "valued the new business at two years' purchase of the net "profit." Then comes their conclusion expressed thus: "In the "light of all this evidence, we have come to the conclusion that "one and a half years' purchase is the appropriate multiplier and "this is the figure we have applied. In the result, we calculate "the loss sustained under this head of the claim at £750."

Now the duty of the tribunal was to estimate the capital value of the business in the new premises as at the point of time immediately after the move into those premises. Had they been hearing the case at that time any figure at which they arrived would necessarily have been wholly an estimated figure. In fact, they were sitting nearly two years after the move. In those circumstances they were bound to have regard to what had actually happened during the interval. That this is so appears clearly from the opinions of Lord Macnaghten and Lord Robertson in *Bwllfa and Merthyr Dare Steam Collieries (1891) Ltd.* v. *Pontypridd Waterworks Co.* Lord Macnaghten said this[5]: "If the "question goes to arbitration, the arbitrators' duty is to determine "the amount of compensation payable. In order to enable him "to come to a just and true conclusion it is his duty, I think, to "avail himself of all information at hand at the time of making "his award which may be laid before him. Why should he listen "to conjecture on a matter which has become an accomplished "fact? Why should he guess when he can calculate? With the "light before him, why should he shut his eyes and grope in the "dark?" Lord Robertson said[6]: "Any estimate of this profit "necessarily involves the question, 'How long would the coal in "'question take to work out?' if for no other reason than in "order to compute the cost of working. If the question thus pre-"sented has to be solved ab ante, the arbitrator, or whoever has

[5] [1903] A.C. 426, 431.

[6] Ibid. 432–3.

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" to deal with it, must form the best conjecture he can of probable " prices and probable wages during the period required to work " out the area in question. But these calculations are resorted " to merely in the absence of facts, and not because the time to " be considered is that moment of time when the notice of " October 15, 1898, was presented. And if, owing to the course " of the procedure, the period required for the working out of the " coal in question has come to be matter of history, then estimate " and conjecture are superseded by facts as the proper media " concludendi. I do not mean that the proper course in awarding " compensation is to wait for the expiry of the period required " for working out the coal. On the contrary, it is natural that " the compensation should be assessed once for all and by " estimate. But the point is that as in this instance facts are " available, they are not to be shut out."

As I read those passages, they do not mean that in making an estimate, such as the one which fell to be made in this case, one is necessarily to stop at the end of the period covering the known facts. If one considered alone the first passage from the decision, which I have quoted earlier, it might well be said that the tribunal had confined their consideration to what, at the date of the hearing, were events in the past; but when the decision is considered as a whole, I do not think that such a conclusion is justified. The period which they have considered as regards the calculation of the capital value of the business in the new premises is not only the financial year 1955–56, but the year 1956–57 in respect of which latter period the net profits were not known at the date of the hearing but had to be estimated for at least the last two months. Up to this point, therefore, I am unable to conclude that the tribunal have misdirected themselves.

The question then remains: Have they erred in principle in taking into account only a period of two years for the purpose of estimating the capital value of the business in the new premises, whereas they took a period of three years in estimating the capital value of the business in the old premises? In this regard it is to be noticed that in estimating the capital value of the business in the old premises the tribunal took the period of three years at the request of and, therefore, presumably in favour of the acquiring authority. Neither the case nor the decision inform us what the net profits for the year 1955–56 were in fact, nor what figures, if any, for the year 1956–57 beyond the figure of gross profits for ten months the tribunal had before them in deciding to adopt a two-year period; but, in the absence of such figures, I do not see what material this court has before it which would enable it to say that in choosing a two-year period rather than a longer one the tribunal has misdirected itself. Nor do I see that the case could properly be referred back to the tribunal with a view to this information being furnished. It follows, I think, from this that equally this court has no ground for holding that the adoption of the multiplier of one and a half amounted to a misdirection.

For these reasons, I am of opinion that the finding of the tribunal on the first point should not be disturbed.

The second question is posed by the tribunal in effect in this way: Whether on the findings of fact they came to a correct decision in law in determining that the legal expenses and accountants' fees incurred by the claimant in preparing his claim in response to the notice to treat formed a proper subject of compensation and were correctly included in their award? In my view, the tribunal were right. It can be said, of course, and it was said, that it is unsatisfactory that the legal costs of compiling the claim, and the legal costs incurred in prosecuting a reference, if there should be a reference, should be assessed, to use a mutual phrase, by different persons; the first set of legal expenses by the tribunal in investigating the claim, and the second set by the registrar of the tribunal or a taxing master. I have some sympathy for this view, but I do not see how it could prevail, short of some statutory modification of the Lands Tribunal Act, 1949, providing that legal costs incurred in compiling a claim should be subject to taxation whether or not the claim was followed by a reference. As matters stand at present, on notice to treat, the claimant and his advisers compile a claim. Let me assume a case in respect of which there is no subsequent reference. In compiling the claim the claimant has to incur legal costs. In order to arrive at a true figure of the loss which he has incurred, he is forced to include the amount of such legal costs; otherwise his claim is for less than the loss which he has suffered. On what principle can it be said that, if there should be a reference, the amount of his loss is to be reduced for the purposes of the reference by the whole of the amount of the legal costs which he has incurred? The Act, in section 3 (5), only deals with the costs of a reference; the rules made pursuant to the Act are wider in form, because rule 49 refers to costs of and incidental to the reference, but, assuming, without deciding, that rule 49 is intra vires, I cannot see how the words " incidental to " can take the costs out of the only place where they can find room prior to a reference, namely, the claim itself, and make them any part of the costs of the reference. In the result, I would dismiss this appeal.

SELLERS L.J. I have read the judgments of both Morris, L.J. and Wynn-Parry J. I agree with them and have nothing I wish to add to them.

Appeal dismissed.
Leave to appeal to the House of Lords granted on terms.

Solicitors: *J. G. Barr; Silkin & Silkin.*

M. M. H.