instance of Capital. Moreover, it appears from the passages cited from the *Manchester Ship Canal* case[43] that regardless of any question of tort the same injunction should be maintained against Capital, though the point is somewhat academic.

I would, however, on the grounds previously stated allow the appeal and discharge the injunctions.

Appeal of first defendants dismissed with costs.
Appeal of second defendants dismissed: no order as to costs.
Counsel to agree minutes of order.
Leave to both defendants to appeal to House of Lords.

Solicitors: *Nicholson, Graham & Jones; Debenham & Co.; Halsey, Lightley & Hemsley.*

E. M. W.

[43] [1901] 2 Ch. 37.

[COURT OF APPEAL.]

JUDGE LEE *v.* MINISTER OF TRANSPORT.

1965
May 27;
June 3.

Lord Denning M.R., Davies and Russell L.JJ.

Compulsory Purchase—Compensation—Costs of claim—"Disturbance"—Meaning—House affected by road planning blight—Purchase notice served on compensating authority—Surveyor's fees incurred for formulating and agreeing compensation for land—Statute excluding from compensation following purchase notice "any "amount attributable to disturbance"—Whether surveyor's costs "disturbance" or "any other matter not directly based on the "value of land"—Whether included in compensation—Town and Country Planning Act, 1962 (10 & 11 *Eliz.* 2, *c.* 38), *s.* 143 (1) (*b*)—*Land Compensation Act*, 1961 (9 & 10 *Eliz.* 2, *c.* 33), *s.* 5 (6).

The owner of a house and land affected by proposals for a new road, having tried unsuccessfully to sell his property, put it into the hands of estate agents, who, after further abortive attempts to sell, advised him to serve notice on the Minister of Transport under section 39 of the Town and Country Planning Act, 1959 (now section 139 of the Act of 1962),[1] requiring him to purchase the property. The Minister did not object, and, the notice being deemed to be notice to treat served by the compensating authority, the estate agents and the district valuer negotiated the price, which was agreed at £5,500. The question whether the compensation should include, in addition to the agreed freehold value of the property and conveyancing costs, a sum in respect of the surveyor's fees incurred by the owner for the formulation and agreeing of his claim, having regard to the specific provision in Schedule 5, paragraph 6 (*b*), to the Act of 1959 (now section 143 (1) of the Act of 1962),[1] that the

[1] Town and Country Planning Act, 1962 (10 & 11 Eliz. 2, c. 38) s. 139 (1):—"Where the whole or part of a "hereditament . . . is comprised in

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compensation payable following a purchase notice "(*b*) shall not "include any amount attributable to disturbance" was referred to the Lands Tribunal, which awarded the fees in question to the owner.

On appeal by the Minister, it was contended that by 1959 "disturbance" had been judicially interpreted as meaning all personal loss, including surveyor's fees, caused by compulsory acquisition, and that therefore the exclusion of compensation for "disturbance" in the Act of 1959 involved the exclusion of the surveyor's fees. For the owner it was contended that "disturbance" meant only personal damage caused by having to vacate premises, and that surveyor's fees were not "disturbance" but were within the words "any other matter not directly based on the value of "land" in rule (6) in section 5 of the Land Compensation Act, 1961 [2]:—

Held, dismissing the appeal, that the claimant was entitled to the fees in question, for surveyor's fees paid to an agent for preparing, negotiating and settling his claim for compensation, pursuant to a purchase notice, were not "disturbance" as judicially defined but were "any other matter not directly based on the value "of land" within rule (6) of section 5 of the Land Compensation Act, 1961,[2] and were therefore not excluded from the compensation by section 143 (1) (*b*) of the Town and Country Planning Act, 1962.

Per Russell L.J. The only discoverable meaning for the words "any other matter" in rule (6) of section 5 of the Act of 1961 is as referring to the established practice of including in the value of the land an allowance for the expense to which the owner has been put in establishing the value of the land, as something not already embraced in the word "disturbance."

Harvey v. *Crawley Development Corporation* [1957] 1 Q.B. 485; [1957] 2 W.L.R. 332; [1957] 1 All E.R. 504, C.A. considered.

London County Council v. *Tobin* [1959] 1 W.L.R. 354; [1959] 1 All E.R. 649, C.A. and dicta in *Hull and Humber Investment Co. Ltd.* v. *Hull Corporation* [1965] 2 W.L.R. 161, 170–171; [1965] 1 All E.R. 429, C.A. applied.

Decision of the Lands Tribunal affirmed.

APPEAL on case stated by the Lands Tribunal (Sir William Fitzgerald Q.C., President).

"land of any of the specified descrip- "tions, and a person claims that— ". . . (*d*) he has been unable to sell "it except at a price substantially "lower than that for which it might "reasonably have been expected to "sell if no part of the hereditament "or unit were comprised in land of "any of the specified descriptions, he "may serve on the appropriate autho- "rity a notice in the prescribed form "requiring that authority to purchase "that interest to the extent specified "in, and otherwise in accordance "with, these provisions."

S. 143: "(1) Subject to the next "following subsection, the compensa- "tion payable in respect of a compul- "sory acquisition in pursuance of a "notice served under these provisions "in respect of a hereditament—(*a*) "shall not include any amount attri- "butable to damage sustained by "reason that the hereditament is "severed from other land held there- "with, and (*b*) shall not include any "amount attributable to disturbance."

[2] Land Compensation Act, 1961, s. 5: "Compensation in respect of any "compulsory acquisition shall be "assessed in accordance with the "following rules: . . . (2) The value "of land shall, subject as hereinafter "provided, be taken to be the amount "which the land if sold in the open "market by a willing seller might be "expected to realise: . . . (6) The "provisions of rule (2) shall not affect "the assessment of compensation for "disturbance or any other matter not "directly based on the value of "land: . . ."

The claimant, His Honour Judge Arthur Michael Lee, was the owner of a residential bungalow and land adjoining consisting of 2·913 acres and known as Hatch Cottage, Griggs Green, Liphook, Hampshire. On June 1, 1962, the claimant agreed to sell the premises to one Andrew Edwards for £5,500 subject to contract, the sale being privately negotiated. When Edwards became aware, as a result of searches and inquiries made by his solicitors, that the property might be affected by road proposals of the Ministry of Transport, he refused to proceed with his purchase. The claimant then instructed auctioneers and estate agents to offer the property for sale and to advertise it. The property was advertised by them in "The Times" newspaper on July 29 and August 19, 1962; but the property was not sold, owing to the "blight" imposed on it by the planning proposals.

The claimant then consulted Cubitt and West, estate agents, valuers and surveyors, of Haslemere, Surrey, who had, prior to the agreement with Edwards, carried out a valuation of the property. They were of opinion that all future prospective purchasers would be deterred from purchasing at £5,500 by the planning proposals, and they advised the claimant that he should serve on the Minister a notice to purchase under section 39 of the Town and Country Planning Act, 1959, requiring him to purchase the property. The notice was prepared by the estate agents, signed by the claimant, and served on the Minister on September 20, 1962. The notice was accepted by the Ministry on October 29, 1962.

Following the usual formalities, the estate agents arranged a meeting and subsequently met the district valuer and inspected the property with him in order to settle the price, which they considered should be £5,500. At that meeting the district valuer agreed the price but when the question of fees arose, the district valuer stated that in such cases the vendor was in the same position as he would be with any other buyer and that the claimant would be responsible for the estate agents' commission. The claimant, on being informed of that, stated that if the district valuer was correct he would pay, but that he would expect to be refunded the valuation fee originally paid to the estate agents, as that would normally be included in their commission on the sale. The estate agents agreed to that. The total amount of the commission on the sale was £145, in accordance with scale 10 of the professional charges of the Royal Institution of Chartered Surveyors. The scale fee in accordance with the same, charged under scale 5, would be £85 1s.

The question whether the claimant was entitled, in addition to the freehold value of the property and conveyancing costs, to the sum in respect of the surveyor's fees and incidental expenses incurred by the claimant for formulating and agreeing his claim for compensation was referred to the Lands Tribunal. Both parties agreed that the case was a test case on a question of law. The member of the Lands Tribunal, giving his decision in favour

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of the claimant, said that he quite agreed that this case involved an important point of law which would continue to arise in future proceedings before the Tribunal. Having decided that surveyor's fees were not part and parcel of disturbance, he held that the payment of those charges by the compensating authority was in discharge of its duty to reimburse the claimant the full value to him of the land acquired; and he awarded the sum claimed on scale 5.

The Minister appealed, the ground being that the tribunal's decision was erroneous in point of law in that the compensation payable to the claimant in pursuance of the purchase notice did not include a sum in respect of surveyor's fees. It was stated on behalf of the Minister that he had agreed to pay the claimant's costs in the event of succeeding on the appeal.

W. J. Glover for the Minister.
D. P. Kerrigan for the claimant.

The cases cited in argument are all referred to in the judgments of the court.

Cur. adv. vult.

LORD DENNING M.R. His Honour Judge Lee owned a bungalow and nearly three acres of land at Liphook. The Minister of Transport proposed to make a new road near the property. The judge then tried to sell it. He got an offer of £5,500 but the sale fell through because of the road proposals. He advertised it in "The Times," but with no result. He put it into the hands of Cubitt & West, estate agents. Two persons were interested but, when they got to know about the new road, they withdrew. The road proposals had cast a "blight" on the property. On the advice of the estate agents, Judge Lee then served a notice on the Minister requiring him to purchase the property. The Minister raised no objection. That meant that the case had to be treated as if the Minister had acquired the property compulsorily and had served a notice to treat for it. The estate agent and the district valuer met to settle the price. It was fixed at £5,500. But then the question arose about the commission payable to the estate agents. Judge Lee wanted the Minister to pay it. But the district valuer did not agree. He said that, apart from the "blight," if Judge Lee had sold it to a private purchaser for £5,500 he would have had to bear the commission himself. So he ought to do so on a sale to the Minister. Judge Lee said that, if such was the law, he would, of course, bear the commission, but he wished for a ruling on it. The point is of practical importance. So the case has been taken as a test case. The Minister has agreed to pay the costs of both sides to get it determined.

In an ordinary case of compulsory acquisition, it has been the practice for many years for the owner to receive as compensation not only the value of the land, but also the fees

A which he has to pay to his surveyor to prepare the claim: and this practice has been recognised by the courts. But this present is not an ordinary case of compulsory acquisition. It is a special case under the "blight" provisions of the Town and Country Planning Act, 1962. This statute, in section 143 (2), expressly says that the compensation "shall not include any B "amount attributable to disturbance." It is said on behalf of the Minister that surveyor's fees are attributable to "disturb- "ance" and are thus excluded. It is said on behalf of Judge Lee that they are not attributable to "disturbance" but are part of the general compensation awarded for compulsory acquisition.

In 1919 Parliament laid down the rules on which compensa- C tion was to be assessed for compulsory acquisition [Acquisition of Land (Assessment of Compensation) Act, 1919]. These rules were re-enacted in 1961 [Land Acquisition Act, 1961]. By these provisions Parliament modified the system which had stood since 1845. It took away the 10 per cent. which used to be allowed for the fact of the acquisition being compulsory. It left untouched D the compensation for injurious affection and severance. Then it preserved these three heads of compensation: (1) "The value "of the land." The owner is to receive the value of the land as in the open market between a willing vendor and a willing purchaser. It must be valued as at the date of the notice to treat. (2) Compensation for "disturbance." The owner is to E receive the personal loss sustained by him by reason of being disturbed in his possession. That is, by reason of having to vacate the premises. This includes such items as the cost of moving his furniture, altering his curtains, and also the surveyor's fees on getting another house: see *Harvey* v. *Crawley Development Corporation*.[1] (3) Compensation for "any other matter not F "directly based on the value of land." This includes, I think, the fees which the owner has to pay to his surveyor, valuer or agent to prepare his claim. Such fees and commission have always been allowed on a compulsory acquisition. This was clearly recognised in *London County Council* v. *Tobin*.[2] It cannot be properly said to be due to "disturbance." It must come, G therefore, under "any other matter."

In 1962, when giving compensation for "blighted" land, Parliament applied these rules but said that nothing was to be given for "disturbance." That means that item (2) above goes out. But item (3) remains. It follows that the owner can recover the fees payable to his surveyor and valuer to prepare H his claim.

Mr. Glover argued that "disturbance" in section 143 was not confined to the loss due to having to vacate the premises. It covered, he said, all damage directly consequent on the taking of the house under statutory powers and thus covered

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

[2] [1959] 1 W.L.R. 354; [1959] 1 All E.R. 649, C.A.

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surveyor's fees in preparing the claim. He relied on the words used by this court in *Harvey* v. *Crawley Development Corporation*.[3] But those words must be read in their context. The court was not concerned there to define " disturbance " precisely. The truth is that nearly all items of loss (over and above the value of the land) are due to being disturbed. Hence they are generically described as compensation for disturbance. But " there may " be some admissible items of loss which are not naturally attributable to disturbance," see *Hull and Humber Investment Co. Ltd.* v. *Hull Corporation*,[4] by Pearson L.J. Surveyor's fees in preparing the claim are some of these. They are not " disturbance " and are not excluded by section 143 (1) (*b*) of the Act of 1962.

In my opinion, therefore, the Lands Tribunal were correct in allowing Judge Lee the commission payable to the estate agents: and I would dismiss the appeal.

DAVIES L.J. The cornerstone of Mr. Glover's argument for the Minister on the meaning of " disturbance " in section 143 (1) (*b*) of the Town and Country Planning Act, 1962, is the submission that by 1959, when the Town and Country Planning Act of that year, which contained a similar provision, was passed, the word " disturbance " had by judicial decision been so interpreted and construed as to include all personal loss due to or caused by compulsory acquisition. Surveyor's fees, he argues, incurred by the landowner for advice upon and the preparation of a claim for compensation are a part of such personal loss and therefore fall within the " amount attributable to disturbance " within the meaning of the section under consideration. According to Mr. Glover, the only matters for consideration in the assessment of compensation are: (i) the value of the land, (ii) injurious affection, (iii) severance, and (iv) disturbance. And there is nothing else.

The opposite contention put forward by Mr. Kerrigan is that disturbance is limited to such personal loss as is caused by the fact of having to vacate the premises. It is pointed out that section 2 (6) of the Acquisition of Land (Assessment of Compensation) Act, 1919 (now replaced by section 5 (6) of the Land Compensation Act, 1961), provides that " the provisions " of rule (2) shall not affect the assessment of compensation for " disturbance or any other matters not directly based on the " value of the land." In the years which have elapsed since the passing of the Lands Clauses Consolidation Act, 1845, it has always been the practice to allow surveyor's fees as part of the compensation; but it has never been necessary before the present case to consider whether such expenses were strictly part of compensation for disturbance or whether they formed part of compensation for any other matters.

[3] [1957] 1 Q.B. 485, C.A.

[4] [1965] 2 W.L.R. 161, 170; [1965] 1 All E.R. 429, C.A.

The reliance placed for the Minister on the decision of this court in *Harvey* v. *Crawley Development Corporation*[5] is, in my judgment, misplaced. What the court was there considering was whether the expenses of moving to a new house were recoverable as compensation for disturbance; and the observations in that case made by my Lord [Denning L.J.][6] and, perhaps more particularly, by Romer L.J.,[7] were in no wise directed to the question whether surveyor's fees could properly be said to be within the category of compensation for disturbance or were within some other recoverable category of compensation.

The strict limitation suggested on behalf of the Minister on the categories of matters to be taken into consideration in the assessment of compensation cannot, in my judgment, be supported. To do so would be to ignore the later words of rule (6). Mr. Glover faces up to this and submits that those words are obsolete. That cannot be so. In *Horn* v. *Sunderland Corporation*[8] Scott L.J. in his well-known judgment treated them as effective. "It was argued before us for the respondent seller," he said, "that, whatever the law had been before, the effect of "rule 6 was to create a general right to compensation for 'dis-"'turbance,' and such other matters as are covered by the "general words of that rule, over and above the price of the "land taken, and that it was the statutory duty of the assessing "tribunal, whatever the basis of valuation on which the price had "been calculated, to add this figure to the valuation of the "land to ascertain the total compensation. I do not accept "that contention, for I agree with the opinion of Lord Alness "(then Lord Justice-Clerk) in *Venables* v. *Department of "Agriculture for Scotland*,[9] that rule 6 'confers no new rights "'although it manifestly purports to save existing rights.' The "rule deals with other matters besides 'disturbance,' but that "topic will serve as typical."

And as recently as last year Pearson L.J. in *Hull and Humber Investment Co. Ltd.* v. *Hull Corporation*[10] said: "But "the compulsory acquisition may also have caused other loss to "the claimants, and the compensation for such other loss must "also be included in the price. It is conveniently referred to "as 'compensation for disturbance,' as nearly all of it is due "to disturbance, but that is not an exhaustive description, as "there may be some admissible items of loss which are not "naturally attributable to disturbance."

It is, therefore, as I think, clear that full effect must be given to the whole of rule (6). It follows that there are more things than disturbance, and that the argument for the Minister is based on an over-simplification and a too limited classification.

[5] [1957] 1 Q.B. 485.
[6] Ibid. 492.
[7] Ibid. 494.
[8] [1941] 2 K.B. 26, 40, 41; 57 T.L.R. 404; [1941] 1 All E.R. 480, C.A.
[9] 1932 S.C. 573, 579.
[10] [1965] 2 W.L.R. 161, 170; [1965] 1 All E.R. 429, 434.

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One is left, therefore, to consider the question whether, when a landowner serves a notice to treat on the Minister, the fees payable to the surveyor for advising, formulating a claim for and negotiating compensation can fairly be said to be "any "amount attributable to disturbance." In my view, they cannot. "Disturbance" must, in my judgment, refer to the fact of having to vacate the premises, and I can see no reason why the fees habitually allowed should be excluded from consideration by the words of section 143 (1) (*b*) of the Act of 1962. I agree, therefore, that the appeal fails.

RUSSELL L.J. The question in this case depends for its solution on the true construction of section 143 of the Town and Country Planning Act, 1962. That section is one of a group which embraces cases where land is "blighted" by proposals for its future use, and which allows the owner to require the relevant authority to acquire it in advance of the time when it might be compulsorily acquired by that authority. If the owner gives notice requiring such acquisition the authority (put shortly) is deemed to have served a notice to treat for compulsory acquisition. Notice to treat is ordinarily followed by negotiations as to value between the district valuer and an expert employed by the owner. In an ordinary case of compulsory acquisition it is well established that the compensation payable extends to the cost of employing such an expert. The question is whether section 143 excludes such cost from the compensation when the owner gives notice to acquire under this group of sections. That section excludes from compensation damage attributable to severance, and provides also by subsection (1) (*b*) that the compensation "shall not include any amount attributable to disturbance." Are the expenses of the owner already mentioned excluded by that phrase?

Over the course of years the cases have established that in the value of land compulsorily acquired is to be included loss due to disturbance: and also, whether under the head of disturbance or on some other ground, expenses incurred after service of notice to treat in establishing the value of the land. When the rules for assessment of compensation were cast in new form by section 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, rule (2) stated that the value of land shall be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise. (*The relevant date is that of the notice to treat.*) Rule (6) lays it down that the provisions of rule (2) "shall not affect "the assessment of compensation for disturbance or any other matter not directly based on the value of land." That is a precautionary rule, but it undoubtedly envisages that rule (2) might be thought to exclude compensation for some matter not directly based on the value of land which is not disturbance. A provision to that effect remained current when the equivalent

of section 143 was first introduced in 1959; and indeed the provision was re-enacted by section 5 of the consolidating Land Compensation Act, 1961.

No one could suggest any meaning that could be given to the words "any other matter not directly based on the value "of land" unless it were a reference to the established practice of including in the value of the land an allowance for the expense to which the owner was put in establishing the value of the land, as something which was not already embraced in the word "disturbance." So the owner contended that "disturb-"ance" in section 143 and its forerunner in 1959 did not include this "other matter." This would seem to me to be a sound argument: the draftsman of section 143 and its forerunner had ready to hand a phrase which would clearly have embraced and excluded the expenses in question and markedly failed to use it.

For the Minister it is, however, argued that whatever may have been the scope of "disturbance" in the Act of 1919, in the Act of 1959 it must be taken as extending to the scope of disturbance as judicially defined in this court in 1957 in *Harvey* v. *Crawley Development Corporation*,[11] which definition was wide enough to include expenses such as these. But in that case it was not material to consider the point before us: it was irrelevant to consider whether judicial additions to value could be broken down into two compartments, and I do not think the argument is sound. In much the same way I expressly referred to the allowance in *London County Council* v. *Tobin*[12] of similar expenses as an instance of compensation for loss due to disturbance in my dissenting judgment in *Hull and Humber Investment Co. Ltd.* v. *Hull Corporation*[13]: but it was quite immaterial for my purposes whether it was disturbance or "any "other matter," and the present question was not in my mind.

I conclude, therefore, that these expenses are not excluded from the total compensation by section 143 and would dismiss the appeal.

Appeal dismissed.

Solicitors: *Treasury Solicitor; Meynell & Pemberton.*

M. M. H.

[11] [1957] 1 Q.B. 485.
[12] [1959] 1 W.L.R. 354.
[13] [1965] 2 W.L.R. 161, 175.