

Before Mr. Justice Hill and Mr. Justice Brett.

BARAOORA TEA Co. . . . . APPELLANTS

1901

May 8th.

v.

THE SECRETARY OF STATE FOR INDIA

IN COUNCIL . . . . . RESPONDENT.\*

*Land Acquisition Act (I of 1894)—Compensation, determination of—Compensation for severance.*

Under the provisions of the Land Acquisition Act (I of 1894) part of an owner's tea garden land was taken, and by the construction of a railway line several acres of land to the south of the line were cut off from the northern portion of the garden, where the residence of the manager and all buildings and offices connected with the management and the coolie lines were situated. The line ran through very deep cuttings for a considerable portion of its length of about a mile and a half, some of which were incapable of being crossed by coolies employed on either side of the line of railway.

*Held*, that in computing the amount of compensation to be awarded, in addition to the market value of the land and the amount allowed for the "standing charges" and the statutory allowance of 15 per cent., the increased cost of working the garden in consequence of the severance of the one portion from the other, should also be taken into consideration.

For the purposes of the Assam-Bengal Railway 17-4 acres of tea land belonging to the Baraoora Tea Garden in South Sylhet was acquired by Government, and a railway line running for a mile and a half through the garden was laid down dividing it into two portions; the portion to the south of the line was cut off from the northern portion where the residence of the manager and all buildings and offices connected with the management of the garden were situated; for a considerable portion of its distance the line ran through very deep cuttings, some of which were over 68 feet in depth and incapable of being crossed by coolies employed on either side of the line of railway. In determining the amount of compensation to be awarded the Deputy Commissioner allowed Rs. 1,456 per acre in respect of the market value of the land acquired as well as the capitalized value of the charges unaffected by the acquisition, and also 15 per cent. on the market value, making together the sum of Rs. 1,675 per acre. The Tea Company made a claim for further compensation on account of the

\* Appeal from Original Decree No. 206 of 1899, against the decree of D. Cameron, Esq., District Judge of Sylhet, dated the 30th of March 1899.

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severance of one portion of the garden from the other, which was disallowed by the Deputy Commissioner. The case came before the District Judge of Sylhet on a reference made by the Deputy Commissioner under s. 19 of the Land Acquisition Act (I of 1894). The District Judge declined to give the Tea Company anything more in respect of the market value of the land and the charges unaffected by the acquisition, and also refused to give anything in respect of the inconvenience and expense due to the severance of one portion of the garden from the other, but he gave them interest at the rate of 6 per cent. on the amount of the award from the date on which the land was taken possession of by the Collector and also a sum of Rs. 2,500 for meeting the expense of making new roads and cleaning out drains and so forth which were filled up from time to time by washings from the railway embankments. The Tea Company appealed against the decision of the District Judge.

Mr. Henderson instructed by Mr. Simmons, on behalf of the appellants.

The Senior Government Pleader (Babu Ram Charan Mitter) and the Junior Government Pleader (Babu Srish Chunder Chowdhry), on behalf of the respondents.

The judgment of the High Court (HILL and BRER, JJ.) is as follows :—

This is an appeal against the decision of the District Judge of Sylhet made on a reference by the Deputy Commissioner of Sylhet under s. 19 of the Land Acquisition Act (I of 1894).

It appears that under the provisions of that Act certain lands belonging to the appellants were taken up by Government for the purpose of the Assam-Bengal Railway. The area thus acquired amounted to 17·4 acres, and the railway line was laid down upon it through the estate of the appellants dividing it into two portions. The portion to the south of the railway comprised an area of some 200 acres, and the effect of the construction of the line was to cut off this portion of the tea garden from the northern portion, where the residence of the

manager and all buildings and offices connected with the management of the tea garden are situated. The coolie lines are also situated to the north of this line. The line, it should be mentioned, runs for a mile and a half through the appellant's garden, and for a considerable portion of that distance it runs through very deep cuttings, some of which are over 68 feet in depth, and incapable of being crossed by coolies employed on either side of the line of railway.

When the case came before the Deputy Commissioner of Sylhet for the purpose of his making his award he allowed to the Tea Company, in respect of the market value of the land acquired as well as the capitalized value of the charges unaffected by the acquisition, 1,456 Rupees per acre which, with the addition of 15 per cent. compensation allowed by the Act, brought up the amount per acre to 1,675 Rupees; a claim was made on behalf of the Tea Company for compensation on account of severance of the southern portion of the garden which, however, was disallowed by the Deputy Commissioner. When the matter came before the District Judge, the Tea Company took exception to the award of the Deputy Commissioner, first, in respect of the market value of the land acquired, and then in regard to the amount allowed for the "standing charges" as they are called, and then in respect of the injuries sustained by the Tea Company by reason of the severance of the lower part of the garden from the upper. The learned District Judge came to the conclusion that the sum of 1,456 Rupees allowed by the Deputy Commissioner in respect of the market value of the land and the "standing charges" unaffected by the acquisition was particularly liberal, and he declined to give the Tea Company anything more in respect of these two heads. He also refused to give them anything in respect of the inconvenience and expense arising, as it is alleged, out of the severance of the lower and upper portions of the garden; but he gave them interest on the amount of the award from the date on which the land had been taken possession of by the Collector, and he also allowed them a sum of Rs. 2,000, to meet the expense of making new roads in the southern part of the garden and a sum of 500 Rupees in respect of expenses to which the Company were put in cleaning out

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drains and so forth, which were filled from time to time by washings from the railway embankment.

In this Court the appellants again urge that the amount allowed in respect of the market value of the land and unaffected charges was insufficient, and they again contend that they ought also to have been compensated for the injury sustained and the increased expenditure involved in the management of the garden by the running of the railway through the garden, so as to separate the two parts of it in the manner I have described above. They further appeal as to the costs of these proceedings, which were disallowed them by the Court below.

Now in regard to the market value of the land acquired and compensation in relation to the standing charges, we see no reason to interfere with the decision arrived at by the District Judge. But we do think that in respect of the severance of the lower and upper parts of the gardens the claim of the Tea Company is right. There can be no question, we think, on the evidence that as a direct consequence of the severance the cost of working the southern portion of the garden will be substantially and permanently increased.

The question then is on what principle compensation is to be allowed on this head. The matter is of some difficulty, but it appears from the evidence of the manager of the tea garden, which we have no reason to discredit, that, in consequence of the severance, he had had, at the time when his evidence was taken, to employ 50 or 60 extra coolies upon the lower part of the garden; he says that this had become necessary solely in consequence of the manner in which the garden had been divided by the railway. Along its course of a mile and a half within the garden there are only two level crossings, by which the coolies can cross from one part of the garden to the other. These crossings are at a distance of three-quarters of a mile from each other, and it is clear enough, therefore, that considerable delay must occur as a consequence in the passage of coolies to and fro from the southern to the northern part of the garden in the latter of which the manufacturing processes are conducted and in other ways.

The evidence puts the resulting loss of time at about two hours per diem in the case of each coolie or  $\frac{1}{4}$  of a coolie as it was phrased

and, as has been already seen, the Tea Company have had to import some 50 or 60 coolies for the working of the severed portion of the garden which in itself must have involved a considerable initial outlay.

On this basis, or rather on the basis of the average working charges per acre per *annum*, we compute that the additional expense of working the severed part of the garden will amount to some £50 per annum which, if capitalised at 10 years purchase, will work out to Rs. 8,000. This sum, we think, will fairly compensate the company for its loss under the present head, and to that extent accordingly we decree the appeal. In other respects the decree of the District Judge will stand.

With respect to the question of costs we are not disposed to interfere with the order of the lower Court. But in this Court, we think, the appellants are entitled to receive their costs from the respondent in proportion to their success, and we decree accordingly.

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## CRIMINAL APPEAL.

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*Before Mr. Justice Ghose and Mr. Justice Taylor.*

YASIN AND OTHERS . . . . . APPELLANTS.

v.

KING EMPEROR . . . . . RESPONDENT.\*

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 Jan. 4.

*Confession, retracted confession, evidential value of, against maker and co-accused—Corroboration—Convictions, evidence of previous—Accused, examination of, in respect of previous convictions—First offences—Sentence—Evidence Act (I of 1872) s. 91—Criminal Procedure Code (Act V of 1898), ss. 342 and 511—Penal Code (Act XLV of 1860), ss. 411 and 457.*

A retracted confession should carry practically no weight as against a person other than the maker ; it is not made on oath, it is not tested by cross-examination, and its truth is denied by the maker himself, who has thus lied on one or other of the occasions. The very fullest corroboration would be necessary in such a case, far more than would be demanded for the sworn testimony of an accomplice on oath.

\* Criminal Appeal No. 278 of 1901.