KING EDWARD PROPERTIES LIMITED (*Applicant*) ..... APPELLANT;

AND

THE METROPOLITAN CORPORATION OF GREATER WINNIPEG (*Respondent*) ..... RESPONDENT.

1966 *Nov. 29

1967 Jan. 24

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Expropriation—Compensation—Part of a parcel of land taken—Application of "before" and "after" method of valuation.

The appellant was the owner of a rectangular parcel of land, part of which was expropriated by the respondent municipality for a roadway. The expropriated land cut diagonally across the appellant's property from the south-east corner to the north-west corner, thus leaving the appellant with two triangular parcels separated by the road. The highest and best use of these lands was for light industrial use. The appellant's purpose in purchasing the property was to realize a profit by carrying out a plan of subdivision thereon.

The parties being unable to agree on the amount of compensation to which the appellant was entitled by virtue of the expropriation, the matter proceeded to arbitration. An award totalling $90,000 was made by the arbitrator. The Court of Appeal, by a majority judgment, reduced this compensation to $34,000. Schultz J.A. would have awarded $56,000.

Each appraiser retained by the parties used the "before" and "after" method of valuation. The respective valuations given by the appraiser for the claimant were $570,000 and $480,000; those given by the appraiser for the municipality were $492,000 and $517,000. The arbitrator was dissatisfied with the evidence of both appraisers and although the total amount awarded by him equated that advanced by the claimant's appraiser, it was arrived at by a different method. He awarded $59,000 for the land and $31,000 for severance. In the Court of Appeal, both the majority and Schultz J.A. preferred to use the method of "before" and "after" valuations. The majority accepted the values of the municipality's appraiser. They allowed $59,000 for the land taken and having recognized that the remaining land had increased in value by $25,000, made their award of $34,000. Schultz J.A. reduced the "before" valuation of the claimant's appraiser to $539,000 and after deducting $483,000 as the "after" valuation, arrived at the sum of $56,000. From the judgment of the Court of Appeal an appeal was brought to this Court.

Held (Abbott and Judson JJ. dissenting): The appeal should be allowed and the award increased to $56,000.

Per Martland, Ritchie and Spence JJ.: In cases such as this the "before" and "after" method of valuation would seem to be the one which attained the most accurate results. Schultz J.A. considered the matter

*PRESENT: Abbott, Martland, Judson, Ritchie and Spence JJ.

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upon proper and well-recognized principles in both the "before" and "after" valuation and his conclusion, rather than that of the majority of the Court of Appeal, should be adopted.

As to the "before" valuation, the view of Schultz J.A. took into account the potentialities of the subject lands at their highest and best use and yet made deduction for the fact that such valuations were only possibilities, and for the costs to which the owner would be put in attaining such valuations. The "before" valuation as made by the municipality's appraiser at the same square-foot rate throughout was unacceptable in that it failed to take into account the fact that the lands in the eastern portion were at a greater distance from an access street than were the lands in the western portion.

As to the "after" valuation, Schultz J.A., in adopting the approximate figure reached by the claimant's appraiser, recognized that the easterly portion having been turned into a wedge or pie-shaped parcel would, as a result, be more difficult to develop. The municipality's appraiser had made no allowance for this difficulty in development and had, in fact, increased the valuation of this area.

Per Abbott and Judson JJ., *dissenting*: The majority judgment of the Court of Appeal should be affirmed. The municipality's "before" valuation, which recognized a generous appreciation in value of $70,000 in the period of seven months from the time the appellant purchased the property, was more realistic than the "before" valuation of the owner's appraiser. The attributed appreciation in value from $419,000 to $570,000 during this period was based on a fanciful plan of subdivision which involved the extension of a street across a railway on the south side of the lot.

The real difference between the two valuators in the "after" valuation was as to the valuation of the easterly triangle. According to the owner's appraiser there had been a serious depreciation in value here; according to the municipality's appraiser there had been none. The majority in the Court of Appeal refused to accept this depreciation in value. The expropriation and the fully paved road which resulted therefrom was an improvement for the entire parcel.

[*Winnipeg Supply & Fuel Co. Ltd. v. Metropolitan Corporation of Greater Winnipeg*, [1966] S.C.R. 336, referred to.]

APPEAL from a judgment of the Court of Appeal for Manitoba[1], reducing the amount of compensation awarded by an arbitrator for land expropriated. Appeal allowed, Abbott and Judson JJ. dissenting.

A. Sweatman, Q.C., and *T. Mathers*, for the appellant.

D. C. Lennox and *F. N. Steele*, for the respondent.

The judgment of Abbott and Judson JJ. was delivered by

JUDSON J. (*dissenting*):—In June 1962 the appellant, King Edward Properties Limited, contracted to buy a rec-

[1] (1966), 54 D.L.R. (2d) 165.

tangular parcel of land on the east side of King Edward Street in the City of St. James in Metropolitan Winnipeg. The purchase was completed in December of 1962. On January 31, 1963, the Metropolitan Corporation of Greater Winnipeg expropriated part of the land for the extension of Madison Street.

The parcel was one of 28.139 acres containing 1,225,726 square feet. It had a frontage of 1615.9 feet on King Edward Street with an average depth of slightly under 800 feet. It was purchased for $419,000 with a cash payment of $70,000 and the balance secured by a five-year mortgage bearing interest at 5½ per cent. The purchase price works out to 34.4 cents per square foot.

The land expropriated for the highway comprised 146,690 square feet (3.368 acres) and it cuts diagonally across the appellant's property from the south-east corner to the north-west corner, thus leaving the appellant with two triangular parcels separated by the road. The triangular parcel to the west comprised 533,543 square feet (12.248 acres) and the one to the east comprised 545,493 square feet (12.523 acres).

The arbitrator awarded $59,000 for the land and $31,000 for severance, a total of $90,000. The Court of Appeal, by a majority judgment, reduced this compensation to $34,000. Schultz J.A. would have awarded $56,000. My opinion is that the majority judgment of the Court of Appeal should be affirmed.

Each appraiser retained by the parties used the "before" and "after" method of evaluation. Here are the valuations:

Before value

Farstad (for the owner)	Whyte (for the municipality)
$570,000	$492,000
After value	
$480,000	$517,000

The Court of Appeal had first to deal with a wide difference between the two valuations prior to taking. They recognized that the parcel was an attractive industrial site, easy of access to the centre of Winnipeg and suitable for subdivision into large lots for warehousing and distributing plants. But an attributed appreciation in value from $419,000 to $570,000 in a period of seven months was just too much for any Court to swallow. It was based upon a

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fanciful plan of subdivision which involved a proposed extension of Bradford Street across the CPR tracks on the south side of the lot. The criticism of the majority in the Court of Appeal and their reasons for their preference of the municipality's valuation are contained in the two following paragraphs, and to me the reasoning is unassailable:

> This is where, in my opinion, he went astray. He had to evaluate undeveloped and vacant land in view of its highest and best use, namely, industrial purposes for which the land was already zoned. He assumed that a road was available to develop this substantial parcel into smaller parcels where none was in existence. Mr. Farstad further assumed that the cost of this road development, after necessary permits had been obtained, would be charged to the prospective purchasers. He failed to take into consideration the area of land required for the proposed extension of Bradford Street, the obtaining of the necessary permits and plans of survey, and he made no allowance for the costs of opening the proposed street nor for the cost of installation of services,—costs which initially would have to be borne by the applicant. By virtue of the expropriation an adequate fully-serviced road was to be constructed, and in fact was constructed, at the cost of the general Metro taxpayers, with no direct cost to the owners of the adjoining property. Further, the suggested increase in value between June 1st, 1962, and February 4th, 1963, of more than 11c. per square foot is not realistic at all in view of the evidence of sales made during that particular period and previous periods.
>
> On the other hand, Mr. Whyte's approach is by far the better; it is more realistic and absolutely proper. His evaluation of the land before the taking at 40c. per square foot recognizes a substantial enough appreciation in land value between June 1962, and February 1963, and amply allows for all increases in land values in the immediate area during that period.

The Court of Appeal, therefore, started with Whyte's valuation of $492,000, which recognized a generous appreciation in value of $73,000 in seven months. Whyte's valuation works out to 40c. per square foot as contrasted with the purchase price of 34.4c. per square foot.

The "after" valuation was broken down by both valuators in the same way. Each recognized that the westerly triangle was the more valuable because of the facilities of access. Each also recognized that the northerly tip of the triangle was more valuable than the rest. These are their valuations of the westerly triangle:

WESTERLY TRIANGLE

	Farstad
Northerly tip	
63,000 sq. ft. @ 90¢ sq. ft.	$ 56,700
Rest of Triangle	
470,543 sq. ft. @ 50¢ sq. ft.	235,271
	$291,971

Whyte

64,669 sq. ft. @ $1.00 sq. ft.	$ 64,669
468,874 sq. ft. @ 50¢ sq. ft.	234,437
	$299,106

The difference of opinion here is slight and it is attributable to this: Whyte thought that the northerly tip was more extensive than Farstad. He gave it an area of 64,669 square feet instead of 63,000, and he thought that it was worth $1 per square foot as contrasted with 90c. per square foot by Farstad.

The real difference between the two shows up in the "after" valuation of the easterly triangle:

WHOLE OF EASTERLY TRIANGLE

Farstad

545,493 sq. ft. @ 35¢ sq. ft.	$190,922

Whyte

545,493 sq. ft. @ 40¢ sq. ft.	$218,197

Farstad values this easterly triangle at 35c. per square foot, Whyte at 40c. per square foot. According to Farstad's figures, there had been a serious depreciation in value here; according to Whyte, there had been none.

The majority in the Court of Appeal refused to accept this depreciation in value. They point out that Farstad's average valuation per square foot for the whole parcel was 46½c. and they could find no rational explanation for the reduction. They did not accept his reason that the approaches were no longer as good. They said:

> The expropriation and the fully improved paved road which results therefrom is an improvement for the entire parcel. Access to both parcels is a first-class road, comparable to any of similar type in Manitoba or possibly elsewhere. Further, it forms part of an overall development to give free and easy access from Portage Avenue to Provincial Trunk Highways 6, 7 and 8 into a very progressive industrial area and will most probably generate business through the volume of traffic in the area.

The majority reasons allowed $59,000 for the land taken—146,690 square feet at 40c. per square foot. They recognized that the remaining land had increased in value by $25,000 and therefore their award of compensation was $34,000.

I agree with their reasons and conclusions and I would dismiss the appeal with costs.

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The judgment of Martland, Ritchie and Spence JJ. was delivered by

SPENCE J.:—This is an appeal from the judgment of the Court of Appeal for Manitoba[1] which, by a majority (Chief Justice and Monnin J.A.), reduced the award of the arbitrator, His Honour Judge A. R. Macdonnell, from $90,000 plus 6 per cent interest to $34,000 plus 5 per cent interest. Schultz J.A. dissented and would have allowed an award of $56,000 with interest at the same 5 per cent rate.

The appellant had purchased the lands from Bridge & Tank (Western) Limited in June of 1962. The lands held originally by the latter company included the whole block from Saskatchewan Avenue on the south to Dublin Avenue on the north, but Bridge & Tank (Western) Limited sold 400 feet southerly from Dublin Avenue across the whole width of the property to the Pepsi-Cola Company Limited in 1961. The sale price was 23 cents per square foot or $10,000 per acre. Therefore, the lands purchased by King Edward Properties Limited contained 28.139 acres with a frontage on King Edward Street along its west limit and along Saskatchewan Avenue or, more properly, the CPR spur line running along the north side of Saskatchewan Avenue on the south limit but with access to no street on the east. The lands were rectangular in shape having a length from north to south of about 1,600 feet and from east to west of about 795 feet. The lands had been purchased by Bridge & Tank (Western) Limited in 1957 at the price of only 4.6 cents per square foot or $2,000 per acre.

The appellant purchased the lands from Bridge & Tank (Western) Limited for $419,000, which is at the rate of 34.4 cents per square foot or $15,000 per acre. The rapid increase in value of the lands in such a short period was typical of the situation in this new and expanding industrial area of Greater Winnipeg. The appellant purchased the lands which were zoned as M-2 for light industrial use to "move this land as soon as possible" and in order to do so drafted a plan of subdivision, produced before the learned County Court Judge as ex. 6. This plan of subdivision called for the extension northerly across Saskatchewan Avenue of a street known as Bradford Street, which extension is shown on the said plan as "proposed Bradford Street

[1] (1966), 54 D.L.R. (2d) 165.

extension". That proposed Bradford Street extension, as sketched on the said plan, ran northerly to the southerly limit of the lands owned by the Pepsi-Cola Company and then turned westerly to continue to King Edward Street. Lots of varying widths lettered from A to G were sketched on the easterly side of the proposed Bradford Street extension. These lands ran from the said extension easterly for about 80 feet to the easterly limit of the lands owned by the appellant which, as I have said, did not abut on any street. Lots, also of varying widths, lettered from I to O inclusive, were sketched on the westerly side of the proposed Bradford Street extension, and lots P to V inclusive were sketched on the east side of King Edward Street, *i.e.*, the westerly edge of the appellant's lands.

To have carried out that subdivision would have required, of course, negotiations with the municipal corporation to extend Bradford Street north and would also have required negotiations with the Department of Transport to permit a new level crossing over the CPR spur line which ran along the northerly limit of Saskatchewan Avenue, *i.e.*, the southerly limit of the appellant's lands.

Evidence before the learned County Court Judge upon the arbitration was given by expert appraisers on behalf of the claimant, the present appellant, and on behalf of the municipal corporation.

The appraiser for the claimant, Mr. Farstad, made his valuation on the basis of the proposed extension of Bradford Street which I have described and divided his valuations into three different pieces of property—firstly, the lands along the east side of the Bradford Street extension, totalling 361,000 square feet, which he valued at 45 cents per square foot for a total of $162,450; secondly, the lands along the west side of Bradford Street extension, totalling 347,500 square feet, which he valued at 50 cents per square foot for a total of $173,750; and, thirdly, the lands along the King Edward Street frontage, 357,000 square feet, which he valued at 65 cents per square foot for a total of $232,050. This came to a total valuation of $568,250 which he rounded out into $570,000.

The appraiser giving evidence for the municipal corporation, on the other hand, Mr. Whyte, simply valued the whole of the lands, before the expropriation, at 40 cents per square foot, rounding out the valuation at $492,000.

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The appraisers then turned to the valuation of the lands after the expropriation. This "before" and "after" method of arriving at the amount which should be awarded to a claimant upon an arbitration has been used frequently and was approved, *inter alia*, by this Court in an arbitration dealing with a nearby property: *Winnipeg Supply & Fuel Co. Ltd. v. Metropolitan Corporation of Greater Winnipeg*[1].

The expropriation consisted in cutting through the property, in a diagonal line from the south-east corner to the north-west corner, of an 80 foot roadway which would be a one-way street northbound. In addition to the actual width of the proposed roadway, the narrow triangle of lands which would have been left at the north-west corner between the new road and King Edward Street was expropriated southerly from the northerly limit of the lands southerly for 460 feet. King Edward Street was to become a one-way street southbound. The result of the expropriation was that the lands now consisted of two roughly triangular parcels—the one to the west side of the new highway running southerly from its juncture with King Edward Street for 1,160 feet, with a width at its northerly limit of only 132 feet and at its southerly limit of 800 feet, the other on the east side of the new street, also triangular in shape, having a north limit of about 680 feet with a depth of about 750 feet, to a sharp point. Both appraisers divided their valuations after expropriation into three parts.

Mr. Farstad, for the claimant, valued the north-west corner of the lands consisting of 63,000 square feet at 90 cents per square foot, totalling $56,700. The balance of the west parcel fronting on King Edward Street he valued at 50 cents per square foot for a total of $235,271. The whole of the east triangle he valued at 35 cents per square foot for $190,922. He rounded out the total valuation to $480,000, *i.e.*, $90,000 less than his valuation before expropriation.

Mr. Whyte, for the municipality, on the other hand, valued the first two parcels at substantially the same amount as did Mr. Farstad, but he valued the large easterly triangle at 40 cents per square foot for $218,197, giving a total valuation of $517,000, as against his valuation prior to expropriation of $492,000, so that he showed an increase in

[1] [1966] S.C.R. 336, 55 D.L.R. (2d) 600.

value of $25,000. He valued the actual lands taken for the new street, 146,680 square feet, at the same 40 cents per square foot for a rounded figure of $59,000, so, therefore, he would have assessed the compensation for the taking at the difference—$34,000.

The learned County Court Judge, expressing himself as utterly dissatisfied with the evidence of both appraisers, took a figure of $59,000, the offer made by the respondent to the appellant for the lands actually taken, and added to it a $31,000 damage item for severance claimed by the appellant from the respondent during the negotiations, to reach a total award of $90,000. It will be seen that although this sum equated that advanced by Mr. Farstad for the appellant, it was arrived at by an altogether different method, and a method which surely could not be supported.

In the Court of Appeal, both Monnin and Schultz JJ.A., pointed out that the learned County Court Judge's assessment was made on the basis that there would not be any entry permitted to the new public street, while both parties agreed now that adequate access to that public street would be provided, and both Monnin J.A., giving judgment for the majority, and Schultz J.A., preferred to use the well-recognized and firmly established method of "before" and "after" valuations which had been used by both appraisers and which, it would seem in cases such as this, always reach the most accurate result.

As the Chief Justice of Manitoba said in *Winnipeg Supply and Fuel Co. Ltd. v. Metropolitan Corporation of Greater Winnipeg, supra,* when the appeal in that matter was before the Court of Appeal for Manitoba, "this places this Court in a position where it must make its own valuation on a proper and recognized basis". I conceive it the duty of this Court to determine whether the result in the Court of Appeal for Manitoba was reached on a proper and recognized basis.

As I have already said, the "before" and "after" method of valuation would seem to be the one which attained the most accurate results. The majority judgment in the Court of Appeal for Manitoba has accepted the valuation made by Mr. Whyte of the property before expropriation, *i.e.,* 40 cents per square foot for the total of 1,225,726 square feet. It must be remembered that the lands were purchased by

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the appellant for the purpose of realizing a profit from the subdivision thereon. The lands were zoned M-2 for light industrial use and all the evidence is that the highest and best use of those lands was for such light industrial use. The proper development of the potential value of the lands, therefore, could only be attained if they were properly subdivided. The appellant had proceeded toward that end when it drafted the plan (ex. 6) and commenced negotiations for the extension of the street and other matters involved in the subdivision of the property in accordance with that plan.

The valuation of the lands before expropriation as made by Mr. Whyte at the same square-foot rate throughout failed to take into account that the lands on the west side then faced on King Edward Street which was, at that time, a street used for traffic travelling in both directions, while the easterly portion of the land ran 795 feet east of that King Edward Street and had access to no street but the said King Edward Street. There could be no acceptable valuation of these lands at the common square foot rate throughout under such circumstances.

I am of the opinion that Mr. Farstad's valuation for the claimant based on a subdivision such as ex. 6 and which showed valuation at three different rates, *i.e.*, 65 cents per square foot for the lands facing King Edward Street, 50 cents per square foot for the lands facing the Bradford Street extension on its west side, and 45 cents per square foot for the lands facing the Bradford Street extension on its east side, was a more realistic evaluation of the value of the property, taking into account its possibilities for a fuller and better use. Of course, the division of the lands by the cutting out thereof of the proposed Bradford Street extension would lessen the actual acreage available for sale by the acreage used in the new street, which Mr. Farstad calculated at 160,100 square feet. Mr. Farstad, therefore, made no claim for any evaluation of that latter acreage but, as Schultz J.A. pointed out in his reasons in the Court of Appeal, Mr. Farstad failed to take into consideration the costs entailed in the creation of the Bradford Street extension, and that it was highly doubtful whether such costs could be recoverable from purchasers of the individual sites, after the extension had been completed. It is, of course, sound that in allowing for the potential value of the

lands which are to be improved one must deduct the costs to the claimant of making such improvements. Schultz J.A., in his reasons for judgment, did reduce Mr. Farstad's valuation "before" expropriation from $570,000 to $539,000 by this $31,000 item, attempting to make the deduction for such costs of the improvements as would have to be borne by the appellant. It must also be recognized that the subdivision as envisaged by the appellant was only a possibility. As Monnin J.A. said:

> Mr. Farstad makes reference not only to unimproved land, as it was, but to value for development and on the assumption that a road existed to service this property, which road in fact did not exist.

With respect, the error in Mr. Farstad's valuation was not in taking into account the road which did not exist but was in failing to take into account the costs to the appellant entailed in creating that road and some discount due to the fact that the creation of that road was by no means assured. There is no proof that the City of Winnipeg would have agreed to an extension of Bradford Street in the fashion envisaged, although it was admitted that such an extension was contemplated by the municipality before the diagonal street was determined upon. There might well be difficulty encountered in the application to the Board of Transport Commissioners to permit a level crossing on the spur line, although the new diagonal roadway does have such a crossing some few hundred feet to the east of that which was envisaged in the proposal for the Bradford Street extension.

In Schultz J.A.'s reasons, there is no calculation to show how the deduction of $31,000 was arrived at, but I do not think it is the duty of this Court to attempt such calculation; rather, it is to determine whether the valuation as made in the Court of Appeal was in accordance with proper and recognized principles. In my opinion, with respect, the view adopted by Schultz J.A. rather than that adopted by the majority of the Court of Appeal, does reach a valuation in accordance with proper and recognized principles in that it takes into account the potentialities of the subject lands at their highest and best use and yet makes deduction for the fact that such valuations are only possibilities, and for the costs to which the owner would be put in attaining such valuations. The actual calculations would not appear to be the concern of this Court.

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Turning next to the evaluation after expropriation, the majority of the Court of Appeal have again accepted the evidence of Mr. Whyte given on behalf of the municipal corporation. In so far as two of the said parcels were referred to by each of the appraisers, *i.e.*, the north-west corner of the lands in the westerly triangle, and the balance of the lands in the westerly triangle, there is very little difference between the opinions of the two appraisers. In so far as the easterly triangle is concerned, Mr. Whyte valued the whole triangle containing 545,493 square feet at 40 cents per square foot, while Mr. Farstad, giving evidence on behalf of the claimant, valued the same triangle at 35 cents per square foot. In the case of Mr. Whyte, this was ascribing the same square foot value to the lands in the easterly triangle after the expropriation as he had ascribed to all the lands in the whole rectangular area before expropriation.

These lands in the easterly triangle were, in fact, those which, prior to the expropriation, had been farthest distant from any access, *i.e.*, from King Edward Street. If the 40 cents per square foot was an average for the whole 28.139 acres, then it is inevitable that the lands in the northeast quadrant would have been of a value of much less than 40 cents to average out over the whole rectangle at that rate. Therefore, in fact, Mr. Whyte has increased the value which he put on the lands in the easterly triangle after the expropriation. Mr. Farstad, on the other hand, valued the lands to the east of the proposed Bradford Street extension, prior to the expropriation, at 45 cents per square foot, and has now valued the easterly triangle at 35 cents per square foot. One cannot say that that represents a decrease of 10 cents per square foot in the valuation of lands similarly placed before and after expropriation, as Mr. Farstad's valuation before expropriation, as I have pointed out above, was based on the proposed Bradford Street extension, which would have made the lands to the east of the said extension accessible to a two-way street and have resulted in a series of rectangular lots A to G in numbering, of varying widths but of a common depth.

The result after expropriation is that there is a triangle which is 680 feet wide at its upper or northern end and which narrows down to a sharp point at the southerly end. Mr. Whyte, in his evidence, admitted that such an irregularly shaped parcel does lead to difficulties and that the

turning of a rectangular parcel into a wedge or pie-shaped parcel, which is a good graphic description of the result, would make it more difficult to develop. Yet, as I have pointed out, Mr. Whyte's valuation at 40 cents per square foot amounts to an increase over his valuation "before" expropriation. This difficulty in development was recognized by Schultz J.A., when he said:

> It would appear that the larger triangular Area No. 2 is more difficult of development and is definitely less valuable. In effect, there is considerable agreement in the evidence of the two appraisers on this point, but Mr. Whyte admittedly made no allowance whatever for this fact....
>
> Having regard to the facts I have stated, I am of the opinion that Mr. Farstad's valuation of $483,000 is the approximately correct one and I would adopt it. Deducting this amount from the $539,000 I have approved as the "before taking" valuation would leave the sum of $56,000 as the amount of compensation payable to the applicant.

I am of the opinion, therefore, that Schultz J.A., has considered the matter upon proper and well-recognized principles in both the "before" and "after" valuation and, therefore, I am of the opinion that the conclusion which he reached should be adopted.

In the result, I would allow the appeal and increase the amount of the award to $56,000. Since the appellant, in Part IV of his factum, has stated that it desired that the Court of Appeal judgment be varied only to the extent of fixing the compensation at $56,000, the appellant should have its costs in this Court. The appellant, by the order of the Court of Appeal, was allowed the costs of the arbitration. In the net result, the judgment of the learned County Court Judge has been reduced from $90,000 to $56,000. The order of the Court of Appeal as to the costs of the appeal to that Court should not be disturbed.

Appeal allowed with costs, ABBOTT *and* JUDSON JJ. *dissenting.*

Solicitors for the appellant: Pitblado, Hoskin & Co., Winnipeg.

Solicitor for the respondent: D. C. Lennox, Winnipeg.