

LAND COURT,

BRISBANE

23rd October, 1992

Re: Claim for Compensation - A92-3.

Henry Roy Hill

v.

Director-General, Department of Transport

### **J U D G M E N T**

This is a claim for compensation consequent upon the resumption by the Commissioner of Main Roads for Road purposes under the provisions of the Acquisition of Land Act 1967 and the Main Roads Act 1920, of an area of 1220 square metres being the whole of Lots 10 and 11 on RP 22336, being the land contained in Certificate of Title 465418, Volume 2377, Folio 158 (the subject land). Notice of resumption was published in the Government Gazette of 13th October, 1990, and this is the date at which the value of the land taken is to be determined for the purpose of assessing such compensation. The subject land was resumed to allow the construction of the Riverview Overpass.

These two adjoining allotments were situated at No 9 Station Road, Riverview, about 100 metres south of the Riverview Railway Station. The land is about 5 kilometres by road east of the centre of Ipswich and about 30 kilometres by road south-west of the Brisbane G.P.O. It is situated about 150 metres north of the Cunningham Highway which is the main access road from Brisbane to Ipswich and to the west.

The subject land was developed with a low set, 3 bedroom, cavity brick dwelling approximately 40 years old, with a floor area of approximately 126 square metres, together with a covered front concrete patio of about 18 square metres. This dwelling was constructed of cavity brick external walls with single brick partitions which were all rendered. Floors were of hardwood and the roof was pressed metal. Other improvements on the land were a pergola-covered rear patio, three adjoining carports with store room, a converted garage housing workshop, honey shed and hairdressing salon, and a storage shed.

These latter improvements, apart from the hairdressing salon and honey shed, were used by Mr Hill largely for the renovation and restoration of a fairly extensive collection of vintage and veteran motor vehicles (the motor vehicle collection). Mr Hill's wife conducted a hairdressing business from part of the converted garage.

Following the resumption, Mr Hill began looking for alternate accommodation which would, as far as possible, duplicate those which existed on the subject land. Despite extensive efforts, he said that he was unable to find any property in his price range, close to public transport, which would not only house himself and his wife, but accommodate his motor vehicle collection and spare parts, the workshop equipment etc, to allow him to continue his former activities.

This search extended over a period of more than twelve months and up to within days of the deadline of 10th January, 1992, which had been set by the respondent for him to vacate the acquired property. Finally he obtained rental accommodation at 35 Brisbane Road, Riverview, but while that accommodation was suitable for himself and his wife, it had only one small shed and no accommodation for his motor vehicle collection. He originally proposed to rent the property, but at the date of hearing he had signed a conditional contract to purchase it.

At the suggestion of the respondent, Mr Hill obtained three quotes in July 1991, for the packing and removal of the motor vehicle collection and associated spare parts. One quote was obtained from Whybirds Pty Ltd, professional removalists of Ipswich, for the sum of \$8,940, plus a further quote of \$6,820 for redelivery from Whybirds' store to an alternate residence. In addition, he obtained quotes from his son, Mr Gregory Hill, an electrical contractor, for \$10,300 with provision for a second move at \$7,725; and from a friend, Mr E.W. Gibson, an engineer, for \$11,800 and \$9,250 for a second move.

As he was not in a position to pay for a commercial operator to move his motor vehicle collection, Mr Hill accepted his son's quote and the motor vehicle collection was moved by his son, Mr Gregory Hill, other family members and friends, on the basis that their services would be paid for at the quoted figure when his compensation claim was finalised. As there was nowhere to store the motor vehicle collection at the time it was moved, it was stored on premises owned by his son, requiring approximately 50 square metres of storage space. Mr Hill senior has made arrangements to reimburse his son in respect of that storage at the quoted rate of \$3.10 per square metre per week, and he said that he will continue to store the motor vehicle collection on the son's property until he is able to construct a new shed on the land that he is now in the process of

acquiring, with a view to moving the collection to that property.

Commencing on 13th December, 1991, the collection of motor vehicles and spares was packed and moved over a period of almost three weeks from the subject land to Mr Gregory Hill's property at 13 Videroni Street, Booval. The workshop equipment was also moved but it went to the rented premises at 35 Brisbane Road, Riverview. The claimant and his wife subsequently vacated the premises on about 6th January 1992.

By letter dated 6th January, 1992, the Crown Solicitor, on behalf of the respondent, wrote to the Registrar of the Land Court requesting, pursuant to section 24 of the Acquisition of Land Act 1967, that the matter be referred to the Land Court for hearing and determination, advising that the respondent was willing to pay \$112,000 as compensation. A detailed claim for compensation dated 10th March, 1992, was served on the respondent in the sum of \$159,877.50. At the commencement of the hearing, leave was sought and obtained to amend the claim to a sum of \$161,652.50, the details of which are as follows:

Land		\$45,000
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Improvements

Dwelling	\$56,650	
Patio	\$ 1,740	
Bar-b-que area/ rear patio	\$ 3,860	
Carport	\$ 6,805	
Hairdressing salon/ shed	\$ 3,335	
Fencing, car tracks, etc.	\$ 2,935	
Total Improvements		\$75,325

Consequential losses - Disturbance

Hairdressing business, goodwill and plant		\$ 2,000
Removal of veteran and vintage cars		\$ 9,300

Removal and relocation of workshop	\$ 1,500
Removal of household furniture	\$ 1,777.50
Second transport of cars and workshop	\$ 6,820
Removal of beehives	\$ 200
Phone disconnection, re-installation and mail redirection	\$ 200
Stamp Duty on replacement home	\$ 830
Storage charges for veteran and vintage cars and parts from 16.12.91 to 23.8.92	\$ 5,400
Construction of new shed	\$ 8,000
Legals on conveyancing of replacement home	\$ 1,500
Valuer fees on compilation of claim	\$ 1,250
Legal costs on compilation of claim	\$ 2,000
Claimant's time spent attending conferences and meetings	\$ 400
Claimant's time spent inspecting replacement properties	\$ 400
<b><u>Total amount of compensation claimed</u></b>	<b><u>\$161,652.50</u></b>

(However, there is an error apparently in the addition of the various amounts as the total of those figures is \$161,902.50).

On 11th May, 1992, an advance of \$90,000 was paid by the respondent to the claimant.

#### The Environment of the Resumed Land

The subject land was situated in a prominently single unit residential area. The rear of the property was adjacent to undeveloped land which extended to the east and to the north to the Brisbane River. The land opposite the subject and bounded by McEwan Street, Endeavour and Station Roads and the highway service road, was acquired by a developer who had intended to build a retail warehouse complex. The aggregation of mainly formerly residential properties was amalgamated by the developer some years ago and improvements have been demolished apart from a small local retail building. The developer was placed in receivership and the mortgagee of the property has been attempting to sell for some time. This large expanse of vacant land does not enhance the general appearance of the area.

This area north of the Cunningham Highway is separated by that major arterial road from a predominantly residential area south of the road, which includes a Housing Commission area. Little sales activity has occurred in the area north of the road since

the acquisition by the developer of the site described above. However, there has been a greater level of activity south of the road and a number of residential sales has occurred in the area.

The subject land was zoned "Special Business" under the City of Ipswich Town Planning Scheme, but the valuers for the parties agree that its highest and best use was as a single residential site.

#### Mr Beasley's Valuation

Valuation evidence was given for the claimant by Mr Peter Beasley, a valuer in private practice in Ipswich, and for the respondent by Mr Michael Slater, a valuer in private practice in Brisbane. In his report and valuation, Mr Beasley stated that "The land is zoned "Special Business" and although used for residential purposes, this zoning has some 'added value' due to the work the registered proprietor carries out in relation to restoration of vintage and veteran cars, beekeeping and hairdressing salon". However, it later emerged that Mr Beasley had valued the land on the basis of its highest and best use as a residential site.

Mr Beasley approached the valuation on a summation basis and he valued the land at \$45,000 by reference principally to the sale of the unimproved land at No 7 Station Road on 8th August, 1991, for \$50,000. Mr Beasley values the house on the subject land at \$450 per square metre and the patio area at \$100 per square metre, arriving at a total of \$58,390. He then lists and values the other improvements. The first of these is a pergola-covered rear patio, having an area of approximately 38.56 square metres, with concrete flooring and partially enclosed with brick and breeze brick screened walls. Mr Beasley values this structure at \$100 per square metre, a total of \$3,860.

He describes the next improvement as three adjoining carports with storeroom, having an overall floor area of approximately 61.88 square metres. This structure had a floor of concrete, with metal deck roofing and part walls of breeze bricks and rendered clay bricks. Mr Beasley values this structure at \$110 per square metre, a total of \$6,805.

Mr Beasley next describes a converted garage which housed workshop, honey shed and hairdressing salon. This had a concrete floor, external weatherboard walls and roof of corrugated asbestos cement, with part corrugated galvanised iron. The front section used as the hairdressing salon was lined and ceiled. It had an overall floor area of 37.05 square metres which Mr Beasley values at \$90 per square metre, or \$3,335.

Finally Mr Beasley describes a storage shed with an overall floor area of approximately 75.68 square metres, with earth floor, walls mainly of corrugated galvanised iron and roof of metal decking and corrugated galvanised iron. Mr Beasley values this structure at \$75 per square metre, a total of \$5,675.

He values the fencing and car tracks at \$2,935.

Mr Beasley's total value of improvements is \$81,000 and when added to the land value of \$45,000, the total of land and improvements is \$126,000.

#### Mr Slater's Valuation

Mr Slater approached the valuation in an entirely different way. He did not arrive

at separate values for the land and the improvements, but considered that the most appropriate way of valuing the subject property was to regard it as a unit of house and land. Mr Slater described the dwelling as having a gross floor area of 126 square metres, with an additional 18 square metres of covered patio.

He describes the other structural improvements as follows:

Salon/storage.

This building has been constructed as a garage. The floor area was 36.6 square metres, concrete floor, hardwood frame, hardwood weatherboard external walls and corrugated asbestos cement roof.

The salon section was 11 square metres, lined and ceiled with asbestos cement and linoleum on the floor. There was a single vitreous china sink fitted. The standard of appointment was modest and obsolete.

The balance was unlined and unceiled and used for storage while a later addition with a skillion roof was used as a honey extraction room associated with the owner's beekeeping pursuits.

Carport/workshop.

Constructed of steel frame aluminium roof sheeting, masonry end and rear walls, open to front, floor area 48 square metres.

Entertainment area

This lay between the rear wall of the dwelling and the carport structure with the roof covering partly supported by the structures. Approximately 35 square metres was covered, the floor was concrete.

Storage shed.

Of mixed construction essentially of hardwood frame with corrugated galvanised iron and an earth floor. There was timber racking fitted for storage purposes and the floor area was approximately 80 square metres.

Ground Improvements

The allotment was enclosed with a 1.8 metre hardwood butt jointed paling fence to the rear and side boundaries and low timber fencing to the street alignment. There were established tree shrubs and lawn. Concrete vehicle tracks ran from the street to the carport.

Mr Slater valued the land and improvements at \$82,500. Apart from the salon/storage shed, he did not consider that the other improvements added any value to the land. However, because of the owner's activity in restoring veteran and vintage cars, Mr Slater felt that these improvements did have a special value to the owner. He considered that the best way of approaching this special value was not to value the existing improvements, which he thought to be obsolete and of little interest to any incoming purchaser, but to make provision for the construction of suitable accommodation on the owner's new premises. To quote his own words:

" In addition to the open market value of the property, there is an element of value to the owner in the relatively large extent of workshop and storage

accommodation constructed on the land. The owner of the property uses these facilities partly for the restoration of vintage motor vehicles and the associated storage of vehicles and parts.

It is highly unlikely that the dispossessed owner would be able to acquire replacement residential property which has storage and workshop accommodation to a similar extent. In order to continue the interest, the claimant would, of necessity, need to have accommodation constructed.

An amount of \$8,000 has been included to allow for the provision of suitable accommodation. "

Mr Slater's valuation is then as follows:

Land and improvements excluding workshop/storage	\$ 82,500
Allowance for construction of workshop and storage	<u>\$ 8,000</u>
Total	\$ 90,500

Neither valuer has assessed any compensation for disturbance

#### The Sales Evidence

In addition to the vacant land sale discussed above adjacent to the subject land, Mr Beasley had regard to nine sales of improved residential properties. Two of these are situated to the north of the Cunningham Highway while the other seven are located to the south. The sales to the north of the Highway are of little assistance. Sale 8 is of an area of 2,494 square metres which sold in June 1991 for \$130,000. This property is improved with a large aged high-set dwelling which is difficult to compare with the subject land. Because of the area and improvements on that property it is significantly superior to the subject. The other sale, Sale No 9, is of an area of 620 square metres on which is located an old high-set dwelling in poor condition. This property sold in July 1991 for \$58,000 and is significantly inferior to the subject property. The only conclusion that can be drawn from these two sales is that the value of the subject land is somewhere between \$58,000 and \$130,000.

Of the sales to the south of the Cunningham Highway, five of these have also been used as a basis by Mr Slater. In keeping with his summation method of valuation, Mr Beasley has analysed each of these improved sales to components of land, dwelling and other improvements. Having separated the land component, Mr Beasley then analyses at a rate per square metre the value of the dwelling and includes the value of other improvements. Mr Slater challenged Mr Beasley's measurement of the areas of several of the dwellings on the sale properties. It emerged that Mr Beasley was unable to enter on any of the sale properties, but endeavoured to measure the improvements by pacing as best he could. Mr Slater, on the other hand, did enter on to the premises, but again did not measure with a tape except in one instance, also relying on pacing out the measurements of the improvements.

I appreciate the difficulties that the valuers had in arriving at the exact measurement of the improvements. However, it does increasingly add to the difficulties

experienced by Mr Beasley in arriving at an accurate valuation by using the summation method. If the size of the house in an analysis of a sale is inaccurate, then the rate per square metre derived from that sale is also inaccurate. In these circumstances the approach taken by Mr Slater is to be preferred, whereby each sale is compared directly as a house and land package with the subject land. It is less sensitive to error in that the value of the whole unit is being compared, rather than a rate derived from component parts. However, this method of valuation requires great care to ensure that appropriate allowances are made for the differences between sales and subject.

Eliminating the sale of the vacant land next to the subject land as being of no assistance in arriving at a residential value, Mr Slater relied on six sales of improved residential properties. However, only one of Mr Slater's sales is situated to the north of the Cunningham Highway and is of a low-set timber frame dwelling clad with vinyl siding, which sold in January 1990 for \$52,000, having a land area of 1105 square metres. It is zoned "Future Industry" and is of little assistance in this matter as it is markedly inferior to the subject land.

Mr Slater's other five sales are those which were also used by Mr Beasley. Sale No 1, 30 Caroline Street, sold in July 1990 for \$85,000. Its land area is 971 square metres, it is zoned "Residential A" and is improved with a lowset brick and tile dwelling and an inground pool; it is fenced and well landscaped. Mr Slater considers it is superior to the subject.

Mr Slater's sale No 2, 35 Caroline Street, sold in January 1990 for \$78,000. It has a land area of 1965 square metres, is zoned "Residential A" and is improved with a highset brick and tile dwelling. Again, Mr Slater considers that this property is superior to the subject land, and he comments that it is an early sale.

Mr Slater's sale No 3, 43 Caroline Street, sold in November 1990 for \$92,000. It has a land area of 1965 square metres, is zoned "Residential A" and is improved with a highset brick and tile dwelling with double garages under. Mr Slater comments that this property is overall much superior to the subject.

Mr Slater's sale No 4, 33 Ipswich Street, sold in March 1990 for \$109,000. It has a land area of 2016 square metres, is zoned "Residential A" and is improved with a lowset brick and tile dwelling with attached carport. He comments that it is much superior to the subject and is an earlier sale.

Mr Slater's sale No 6, 186 Old Ipswich Road, sold in July 1990 for \$98,000. It has a land area of 2808 square metres, is zoned "Residential A" and is improved with a brick and tile dwelling. Mr Slater comments that it is a large allotment falling to a gully but is superior to the subject.

On the basis of this sales evidence Mr Slater concludes that at 13th October, 1990, the subject land can be worth no more than \$82,500. It is easy to see how Mr Slater arrived at this conclusion, as there are more modern brick veneer homes situated south of the Cunningham Highway on areas of land not dissimilar to the subject.

#### The Value of the Subject Property

However, I have come to the conclusion that the area to the north of the Cunningham Highway is a more valuable residential area than the area to the south.

The area to the north is situated between the Cunningham Highway and the railway line. It has easy access to the Riverview railway station, which is situated on the main Brisbane to Ipswich rail corridor. The Cunningham Highway also effectively separates the area to the north from the area to the south, including the Housing Commission area. Mr Beasley, whose practice has principally been in the Ipswich area, says that the influence of the Housing Commission area has had a continuing adverse effect on the real estate market for all land south of the highway in Riverview. This may account for the seemingly modest sale prices for substantial houses in this area.

The subject land was a regularly shaped block which sloped gently towards the Station Road frontage. At the rear was an area of undeveloped land which extended for some distance. It is also within an easy walk of the Riverview railway station which would make it attractive to many potential purchasers. In these circumstances, I consider that the land itself is considerably superior to the land comprised in any of the sales used by Mr Slater.

The dwelling is a cavity brick dwelling which is approximately 40 years old. The comparison sales are improved with brick veneer dwellings of much newer construction. From the evidence presented it is obvious that the dwelling which was on the subject land was a substantial structure although showing some signs of its age. However, a cavity brick home is, all things considered, a superior dwelling to a brick veneer dwelling. The house itself was situated so as to allow maximum usage of the land to the rear and the evidence indicates that the storage and shelter areas have grown over the years as Mr Hill has expanded his interest in the restoration of vintage and veteran cars.

I also draw the conclusion from the evidence that Mr Slater feels that there is some added value in the converted garage which was used partly as a hairdressing salon, partly as a workshop which housed the lathe, welder, etc., and partly as a honey extraction shed. It would seem that he accounted for this in his value of \$82,500.

Doing the best I can with the evidence before me, I have come to the conclusion that the value of the subject land, the dwelling thereon and the converted garage is of the order of \$95,000. Taking into account the well-known judicial pronouncements that the assessment of compensation is to be approached in a generous rather than a niggardly spirit (see Roper J. in Latimer v. North Coast National Agricultural and Industrial Society 14 L.G.R. (NSW) 30 at p. 32) and that in a case of compensation, doubts are resolved in favour of a more liberal estimate (see Dixon J. in Commissioner of Succession Duties (South Australia) v. Executor Trustee and Agency Company of South Australia Ltd [1947] 74 C.L.R. 358 at p. 374), I feel that the sum of \$95,000 more appropriately reflects the value of the land and those improvements.

With regard to the value of the other improvements, I favour the approach adopted by Mr Slater rather than that adopted by Mr Beasley. The difficulties of valuing each component part of the improvements are compounded in this circumstance by the fact that they are of varying construction and have been built at various times to the requirements of the landowner. It is difficult in such circumstances to assess the added value of such improvements to a hypothetical prudent purchaser, in the position of the

dispossessed owner and how much extra he would be prepared to pay rather than fail to obtain the subject property. Most prospective purchasers would pay little or nothing more for them, no matter how useful they were to the claimant, and I think that a prudent purchaser in his position would assess the added value by calculating what he would have to spend to provide for such accommodation on another property.

The approach then of Mr Slater of allowing for the construction of a suitable shed is, to my mind, correct. However, having regard to the evidence, I have some doubt as to whether the shed which Mr Slater envisages takes account of the electricity connection about which Mr Gregory Hill gave evidence. Although I agree with Mr Jones, Counsel for the respondent, that Mr Gregory Hill's evidence did indicate that he was ill prepared to give a detailed account of the cost of connecting electricity to the replacement shed, the fact remains that there is unchallenged evidence that the appropriate power to run the workshop equipment was connected to the workshop area of the subject land.

Bearing in mind the pronouncements which I mentioned above, I have come to the conclusion that an allowance for the construction of the replacement shed should be \$10,000. Therefore, I find the value of the land and structural improvements to be \$105,000.

#### Disturbance

There remains to be assessed the various items of disturbance set out in the claim for compensation. The principles which attach to the award of disturbance are set out in the case Harvey v. Crawley Development Corporation (1957) 1 All E.R. 504 at page 507. These were also discussed in R.A. Wall v. Commissioner of Irrigation and Water Supply (1970) 37 C.L.L.R. 65 and R.W. Barber v. Landsborough/Maroochy Water Supply Board (decision dated 11th December, 1986 - unreported).

The Acquisition of Land Act 1967 makes no provision for a specific statutory head of claim in relation to disturbance. However, it is well established that losses arising from disturbance caused by the compulsory taking of land are to be taken into account when assessing value to the dispossessed owner. In Commonwealth v. Milledge (1953) 90 C.L.R. 157 at p. 164, Dixon C.J. and Kitto J. in a joint judgment said in relation to disturbance:

" *Its relevance to the assessment of the amount which will compensate the former owner for the loss of his land lies in the fact that the compensation must include not only the amount which any prudent purchaser would find it worth his while to give for the land, but also any additional amount which a prudent purchaser in the position of the owner, that is to say with a business such as the owner's already established on the land, would find it worth his while to pay sooner than fail to obtain the land.* "

By introducing the concept of "the prudent purchaser in the position of the owner", it is clear that a dispossessed owner may not be entitled to receive compensation for all economic loss or costs which he perceives as resulting from the resumption. Disturbance can be awarded only for those losses or costs which are not too remote, and which are the natural and reasonable consequence of the resumption: Harvey v. Crawley Development Corporation (1957) 1 All E.R. 504 at p. 507; Universal Sands and Minerals Pty Ltd v. The Commonwealth (1980) 30 A.L.R. 637 at p. 640.

In addition, the dispossessed owner has a duty to mitigate his loss as best he can and the amount of compensation sought in this regard should be reasonable, according to the circumstances of the particular case. (See The Commissioner for Railways v. G. and M. Core Pty Ltd (1976) 3 Q.L.C.R. 342 at p. 349). The onus is therefore on the claimant to prove that the various heads of disturbance come within the abovementioned criteria.

The respondent challenged a number of the items claimed by the claimant but agreed with others. The items agreed to are as follows:

Hairdressing Business - Goodwill and plant	\$ 2,000
Removal of Household Furniture	\$ 1,777.50
Removal of Beehives	\$ 200
Phone disconnection, re-installation and mail redirection	\$ 200
Stamp Duty on replacement home	\$ 830
Legals on conveyancing of replacement home	\$ 1,500
Valuer fees for compilation of claim	\$ 1,250

There are a number of items which the respondent agrees are compensable but has contested the amount. These are as follows:

Removal of veteran and vintage cars	\$ 9,300
Removal and relocation of workshop	\$ 1,500
Legal costs on compilation of claim	\$ 2,000

The items which the claimant says are not compensable are as follows:

Second transport of cars and workshop	\$ 6,820
Storage charges for veteran and vintage cars and parts from 16.12.91 to 23.8.92	\$ 5,400
Construction of new shed	\$ 8,000
Claimant's time spent attending conferences and meetings	\$ 400
Claimant's time spent inspecting replacement properties	\$ 400

Before turning to the items of disturbance that are in dispute, it is first necessary to consider the circumstances which gave rise to the various heads of claim. Mr Henry Roy Hill, the claimant, gave evidence and explained that the various improvements at the rear of the house were used in connection with his restoration of veteran and vintage vehicles. He explained the uses to which the various structures were put, including the completely equipped workshop which occupied part of the garage. Mr Hill also tendered a list of the components of nine vehicles and quantities of spare parts which formed his motor vehicle collection. At the time of resumption he was in the process of restoring one of these vehicles. He also explained that he had been restoring veteran and vintage vehicles for about 20 years.

Mr Hill said that soon after receiving the notice of resumption he took steps to find another property where he and his wife could live and where he could house his collection and carry on the restoration of the vehicles. However, he was delayed in this process by illness until December 1990. From then until the end of 1991, he explained

that he had visited up to 13 real estate agents in Ipswich and had advised them of his requirements. He also explained that he needed to be near public transport, because walking any distance was difficult for him. The subject land had only been about 100 metres from railway transport, whereas the property that is being purchased is some 250 metres from the railway station.

Mr Hill estimates that he would have spent between 400 and 500 hours searching for a suitable replacement property. He inspected many properties from the road and where they looked suitable, inspected them more closely. Over this period he found three that were suitable, but the prices were well beyond the offer made by the Main Roads Department. These were all at Brassall and ranged in price from \$135,000 to \$157,000.

Mr Hill provided details of his efforts to locate a suitable property and it is clear from the evidence that he had difficulty in finding any that fitted his requirements. It is also apparent that Mr Hill and his family spent a considerable amount of time and effort searching for a suitable replacement property within their price range.

This search proved unsuccessful and Mr Hill said he was almost in a situation of desperation when a friend, who was aware of his difficulty, advised that the property at 35 Brisbane Road was available for renting. As Mr and Mrs Hill had to vacate the subject land by 10th January, 1992, they accepted the friend's offer on 22nd or 23rd December, 1991, and the Hills moved to that property early in January, 1992. After living in the premises for some time, Mr Hill approached the friend to see if she was interested in selling the property. Agreement was reached by the middle of April 1992 that the price of the property was \$108,000 and a conditional contract was signed at that time.

Mr Hill also explained that he did not apply for an advance until he had found a replacement property, as the interest earned on the advance monies would have affected his pension entitlements.

I turn now to the individual items of disturbance which are in dispute.

(1) Removal of Veteran and Vintage Cars

The amount claimed under this item is \$9,300, being based on the quote submitted by the claimant's son, Mr Gregory Hill, on 12th July, 1991, for \$10,300 and which was accepted by the claimant, except for an amount of \$1000 for all risk insurance which was excluded as the collection was not insured during the move. Mr Gregory Roy Hill gave evidence and submitted a hand written document which he said accurately records the details of truck, trailer and crane hire, and the number of hours worked and the persons involved in carrying out the work. These details show that truck and trailer hire amounted to \$1,500; crane hire amounted to \$2,400; while 6 people worked a total of 360 hours over 15 days at \$15 per hour for a total of \$5,400; the grand total being \$9,300, exactly the figure quoted to move the collection.

The six people who carried out this work were either family members or friends of the claimant and no payment has yet been made to any of them, as their arrangement with the claimant is that they will be paid in accordance with the hours worked when compensation is awarded.

The respondent concedes that this is a compensable item of disturbance, but disputes the amount as the quotation was provided by the claimant's son and the work was done by family and friends. The respondent will, however, agree to the figure of \$8,940 quoted by the professional removalists, Whybirds Pty Ltd.

The amount in issue is a mere \$360 and in the circumstances, I propose to adopt the claimant's figure of \$9,300, even though payment has not yet been made. In adopting this figure, I do so on the basis that the Whybirds' quotation dated 30th July, 1991, was firm for a period of only 90 days after which it would have been subject to review. It is therefore entirely possible that the price could have increased between the date of the quotation and the date of moving.

The respondent raised the points that

- . the quotation was provided by the claimant's son who had an "interest" (either proprietorial or otherwise) in the collection;
- . the persons undertaking the work were either family members or friends; and
- . no expense has been incurred as the people involved have received no payment.

In R.W. Barber v. The Landsborough/Maroochy Water Supply Board, an unreported decision of the then learned President of the Land Court, Mr W.F.G. Smith, delivered on 11th December, 1986, the claimant had insufficient funds to accept the quotation of professional removalists to shift his stud stock, etc., but made other arrangements. Mr Smith held that the claimant was entitled to be reimbursed for his actual removal costs, but not on the basis of a quotation he did not accept or on the basis of an amount which he had not proved was expended.

The point arises in the present case, as to whether the claimant is entitled to an award under this head when he has not paid anyone for the cost of the move. I have come to the conclusion that he is so entitled for the following reasons. First, the respondent admits that the claim of this item of disturbance is compensable to the extent of the professional quotation. Second, the Supreme Court of South Australia has recognised that there are circumstances where an amount should be allowed for removal expenses, even though the claimant had literally incurred no expense in removal. In The Minister for Environment v. Petroccia (1982) 55 L.G.R.A. 244 at p. 270, Wells J. found that an amount for removal expenses should be allowed even though the move was effected over a period of time by the claimant who received substantial assistance on a voluntary basis from a friend. Finally, included in the detailed statement of the work actually performed prepared by Mr Gregory Hill are amounts for truck, trailer and crane hire. Although no evidence was given to this effect, it seems unlikely that these amounts remain unpaid unless Mr Hill was able to reach some agreement with the owners of the equipment. Be that as it may, I am of the opinion that Mr Hill senior feels that he has a moral obligation, if not a legal obligation, to pay the amounts stated on the detailed account.

(2) Removal and Relocation of Workshop

The evidence shows that the workshop equipment was moved from the subject

land to 35 Brisbane Road, Riverview, over a period of three days from 2nd to 4th January, 1992. Again, the five people involved were family and friends and truck, trailer and crane hire was involved. The only quotation for this item was from Mr Gregory Hill on 29th July, 1991, for \$2,000 including an amount of \$500 for all risks insurance. The detailed account prepared by Mr G. Hill is for the exact amount of \$2,000 but once again the amount for insurance was excluded on the amended claim.

The respondent did not challenge this item other than in a general manner along with the previous item. The fact remains that the equipment has been moved and the only evidence that I have is that of Mr G. Hill. In accordance with my reasons for allowing the previous item for removal of the vehicle collection, I propose to allow the claim for this item in full at \$1,500.

In allowing these two items I must point out that I do so with some reservations. The quotations submitted by Mr G. Hill understandably include \$500 in each case for all risks insurance. That is quite proper at the quotation stage as it would be reasonable to expect that the owner would wish his possessions to be insured. However, the same amount for insurance appears in the detailed accounts (Exhibits 23 and 24), which must have been prepared after the work had actually been carried out. This raises the question as to why Mr G. Hill included such amounts when he knew that no such payments had been made.

On closer examination of the quotations and the detailed accounts, other questions arise. For example, in the detailed quotations for moving the collection dated 29th July, 1991, Mr G. Hill estimated labour at 360 man hours at \$15 per hour. The detailed account, prepared some time after 1st January, 1992, calculates precisely to this total. Given the complexity of the task and the relative inexperience of those involved in moving such a collection, the precision in quoting defies belief.

Again, the same quotation shows an estimate for crane hire of \$2,400, based on 40 hours at \$60 per hour. However, the detailed account shows actual crane hire at that amount, but purporting to be based on actual crane hire of 120 hours at \$20 per hour. Similar differences appear in respect of the quotation and the account for relocation of the workshop equipment.

It would seem, therefore, that Mr G. Hill has quoted for amounts in respect of these items and has ensured that the detailed accounts conform exactly to those quotations. However, despite my reservations, I intend to give the benefit of the doubt to Mr G. Hill, as his truthfulness was not seriously challenged and he may have a reasonable explanation. In any case I have no other evidence in this regard.

### (3) Second Transport of Cars and Workshop

An amount of \$6,820 is claimed for this item of disturbance and this is challenged by the respondent as not compensable. However, in the event that I find this item is compensable, the respondent will agree to that amount on the basis of Whybirds' quotation of 30th July, 1991, for redelivery from its store to the new residence. Although the item of claim includes the workshop, I assume that this is an error, as the workshop equipment is already at 35 Brisbane Road and would not be the subject of a second move. Also, the Whybirds' quotation, the basis of the respondent's

acceptance of the quantum, does not include the workshop equipment.

Counsel for the claimant, Mr Morton, submits that this item of claim really stands or falls with the claim for the storage of veteran and vintage vehicles and associated parts, and that this is a question of whether or not the claimant has in all the circumstances acted reasonably. He refers me to Kerry v. State Transport Authority (1985) 38 S.A.S.R. 502, in which he said the situation was not dissimilar to the present case. In that case Matheson J. allowed removal expenses for two moves, as he held that the law allows a dispossessed owner a reasonable time to locate a property which, if not identical, is a reasonable substitute or replacement. He considered that 12 months was a reasonable time in all the circumstances. The resumed land in that case was a house property of 2580 square metres with access to the Torrens River, the water from which was pumped to an extensive garden of fruit and other trees, shrubs, flowers and vegetables. The claimant and his wife had looked at between 270 and 280 houses in seeking to find a suitable replacement property.

It is important to consider the particular circumstances of Kerry's Case. There the land was resumed on 10th March, 1983, and on 30th October, 1983, the dispossessed owner moved to a rented house which he was still renting at the date of hearing in November 1984. In finding that 12 months was a reasonable time to locate a replacement property, Matheson J. had regard to the claimant's "reasonable promptitude and thoroughness in searching for another property". The situation there was complicated by a substantial increase in property values in that 12 month period.

In the present case the claimant remained in occupation of the property from the date of resumption, 13th October 1990, until the first week in January 1992. As in Kerry's Case, I do not doubt that the claimant acted with reasonable promptitude and thoroughness in searching for another property. However, for various reasons he was unable to locate suitable premises until he commenced renting his present residence.

Two questions arise for consideration. Has the claimant done all he could to act reasonably and mitigate his loss? Was it a natural and reasonable consequence of the resumption that the claimant has not found a suitable replacement property in the period between October 1990 and December 1991, necessitating the storage and second transportation of the motor vehicle collection? Somewhat similar questions arose for determination by my learned colleague, Mr D.M. White, in the case of Fruto Pty Ltd v. Landsborough/Maroochy Water Supply Board (not reported, decision delivered 17th December, 1987). In that case the dispossessed owners had not vacated the resumed land or found replacement premises between the date of resumption on 13th December, 1986 and the date of occupation by the constructing authority on 1st May, 1987. The dispossessed owners claimed storage costs of goods and chattels from that date to 7th December, 1987, a period of 31 weeks. At the date of hearing they resided in a caravan on the balance land and were undecided as to whether they would remain there or move elsewhere. They claimed they had no money and could not vacate the resumed land.

At pages 9 and 10 of his judgment, Mr White said:

" They were given ample notice of the intentions of the constructing authority with regard to its

*desire to take possession. They did nothing to assist themselves by making an early claim and taking an advance....If the matter is looked at purely from the attitude of a hypothetical prudent person in the position of the claimants dealing with a prudent and understanding constructing authority and on the assumption that a claim was made immediately following the resumption, an advance taken and notice given of the taking of possession within a few weeks thereafter I think it would not be unreasonable to expect that such claimant would press for and would be given cartage costs and storage costs of furniture and effects for a period in which he could be expected to rebuild on his remaining land or to search out and purchase a home elsewhere. A period of three months in my opinion would be sufficient. "*

In arriving at his decision, Mr White cited the judgment of the Land Appeal Court in The Commissioner for Railways v. G. and M. Core Pty Ltd, which is particularly pertinent in the subject case. At page 349, the Land Appeal Court said: *"It seems to us that a dispossessed owner can mitigate, to at least some degree, a potentially adverse financial situation arising from the resumption by using the provisions of Section 23 of the Acquisition of Land Act, which allows a claimant to apply for an advance against compensation at any time after he has delivered to the constructing authority his claim for compensation in accordance with the requirements of Section 19 of that Act, and provides a means whereby the constructing authority can be compelled to advance up to its assessment of the compensation payable to the claimant. We feel that the use of Section 23 at the earliest practicable date after the resumption occurs can be of significant benefit to the dispossessed owner and we are of the opinion that the Court should not and cannot compensate an owner for any losses resulting from the failure to make the best use of the provisions of the statute. "*

Applying the reasoning of the Land Appeal Court to the subject case, the claimant has not done all that he could to mitigate his loss. If he had accepted an advance soon after the resumption, I feel sure that he could have made sufficient arrangements to avoid the necessity of storage of the motor vehicle collection on the son's premises necessitating a second relocation of that collection. Mr Hill has stated that he did not do so because of the effect on his pension. This is his own choice and is not a natural and reasonable consequence of the resumption. Therefore in my opinion it should not be a recoverable item of disturbance.

In the circumstances, by analogy with the reasoning of Matheson J in Kerry's Case, I think that twelve months from the date of resumption is a reasonable period for the claimant to have located a replacement property. If he had done so, then he could have made suitable arrangements for the relocation of the motor vehicle collection in one move and eliminated the need for its storage at the son's premises. Therefore I do not propose to allow this claim.

4. Storage Charges for Veteran and Vintage Cars and parts from 16.12.1991 to 23.8.1992.

As this head of claim stands or falls with the one discussed above, it follows that I do not allow this claim.

5. Legal costs on compilation of claim.

The respondent challenged the amount of \$2,000 on the basis that the items contained in Exhibit 7 appeared excessive. I do not propose to go through these items in detail, it is sufficient to say that Mr Phillip Anthony Hunter, solicitor employed by the firm Lees

Marshall and Warnick, who compiled this account, explained that he was not the solicitor who had original charge of the file but took it over earlier this year. Mr Hunter said that he compiled the account by going through the file in detail and determining the number of necessary letters, the drawing of folios, the perusal of folios, the receipt of necessary letters, phone calls and sundry items, including photocopying, facsimile charges, stationery, postages, etc. By costing each of these items at the appropriate District Court scale, Mr Hunter arrived at the sum of \$2,000.

This amount does seem excessive when compared with the amounts which have been allowed for legal fees for compilation of claims in similar circumstances. It may well be that not having charge of the file from its commencement, Mr Hunter had some difficulty in determining just what was relevant to the compilation of the claim and what was not. Be that as it may, I have come to the conclusion that, given the circumstances of this case and the difficulty that the claimant had in locating suitable premises and moving the collection of veteran and vintage cars, there could be a great deal of correspondence etc on the file that deals with matters unrelated to the actual lodgement of the claim, as it is, afterall, reasonably uncomplicated. I therefore feel that fees involved in the preparation of the claim would be appropriate at the sum of \$1,500.

6. Claimant's time spent attending conferences and meetings.

An amount of \$400 has been claimed under this head of claim on the basis of the claimant's attendance at four meetings, three of which went for two hours and one for three hours, and then there was travelling time. The respondent challenges this claim on the basis that it is not compensable and in any case, Mr Hill is retired so that it cannot be said that he lost income as a result.

I do not propose to allow this claim as I agree with the reasoning of the learned former President of the Land Court in Barber's case, where he held that a claim for the attendance at such conferences and meetings is akin to a vendor in the market place seeking to recoup from a purchaser his expenses for the time he spent to negotiate a purchase price. (See also Shann v. The Commissioner of Water Resources (1986-1987) 11 Q.L.C.R. 194 at pp. 224 and 225, and the authorities discussed therein.)

7. Claimant's time spent in inspecting replacement properties.

Mr Hill gave evidence that he spent something like 400 hours in seeking a replacement property and he produced details of some of the properties considered or inspected. This item is challenged by the respondent as not compensable and that as Mr Hill is retired, he has lost no income in this activity.

Again I refer to the decision of Mr Smith in Barber's Case. There he rejected a claim for time spent inspecting replacement properties on the basis of costing the claimant's time. However, he did find that there would have been some expenses (travelling, petrol, meals, etc.) associated with inspecting a reasonable number of properties in connection with the purchase of a replacement property.

In the present case there is no doubt that Mr Hill would have incurred similar out of pocket expenses. While most of the properties he inspected are in the Ipswich area, he said he looked at properties as far away as Caboolture.

I have no evidence of the extent of Mr Hill's expenses in this regard, but by

analogy with the reasoning in Barber, I adopt the sum of \$300.

#### Construction of New Shed

This item of disturbance appears in the claim for compensation but I have dealt with this matter as part of the valuation of land and improvements. The claimant is therefore not entitled to this as an item of claim for disturbance.

#### Award of Compensation

In accordance with the various findings which I have made, I determine the compensation payable by the respondent to the claimant in the rounded sum of \$125,400, made up as follows:-

Land and Improvements (including replacement shed) \$105,000

#### Disturbance - (Agreed heads)

Hairdressing business, goodwill and plant	\$ 2,000
Removal of household furniture	\$ 1,777.50
Removal of beehives	\$ 200
Phone disconnection, reinstallation and mail redirection	\$ 200
Stamp Duty on replacement home	\$ 830
Legal costs on conveyancing of replacement home	\$ 1,500
Valuation fees on compilation of claim	\$ 1,250

#### Disturbance - (heads of claim agreed but amounts not agreed)

Removal of Veteran and Vintage Cars	\$ 9,300
Removal and Relocation of Workshop	\$ 1,500
Legal costs on compilation of claim	\$ 1,500

#### Disturbance - (heads of claim not agreed)

Second Transport of Cars and Workshop	not compensable
Storage charges for Veteran and Vintage cars and parts from 16.12.91 to 23.8.92	not compensable
Claimant's time spent attending conferences and meetings	not compensable
Claimant's time spent inspecting replacement properties - compensable as to out of pocket expenses	\$ 300

#### Interest

In this case the claimant remained in occupation of the subject land until about 6th January 1992 (according to Mr Hill's evidence, he and his wife vacated the house at the beginning of the week of 10th January 1992). In accordance with the well established principle, he is not entitled to interest for the period in which he was in occupation. I am informed that an advance of \$90,000 was paid by the respondent to the claimant on 11th May 1992.

The recent decision of the Land Appeal Court in Townsville City Council v. M.V.O. Investments Pty Ltd, delivered 30th September, 1992 (not yet reported), affirmed the decision of the learned President of this Court in Varitimos v. Queensland

Electricity Commission (1990-91) 13 Q.L.C.R. 1, that interest on professional valuation and legal fees incurred in the preparation of the claim is payable only from the date of actual payment of those fees by the dispossessed owner. In this case I am informed by Counsel for the claimant that valuation fees have not as yet been paid and that legal "Resumption Costs" were paid as follows:

	Amount	Date paid
Resumption costs	\$ 574.00	11.6.91
	\$2,586.60	7.7.92

These are the only details that I have been provided with in respect of the payment of legal costs in this matter, apart from conveyancing costs which have been dealt with elsewhere. I can therefore only assume that the initial payment of \$574 on 11th June 1991 was necessarily incurred in preparation of the claim for compensation. In respect of the second payment of \$2,586.60 on 7th July, 1992, I assume that this amount included payment for legal costs other than those incurred in the preparation of the claim for compensation. In any case, I have awarded the sum of \$1,500 under the head of claim.

#### Order of the Court

I determine compensation payable by the respondent to the claimant under all heads of claim at \$125,400.

I order the respondent to pay to the claimant interest at the rate of 9.5 per cent per annum on the sum of \$122,650 from 6th January 1992 to 11th May 1992 when the advance was paid, and on the sum of \$32,650 from that date up to and including the day immediately preceding the date on which payment of compensation is made.

I further order the respondent to pay to the claimant interest at the rate of 9.5 per cent per annum on the legal and valuation fees incurred in the preparation of the claim for compensation up to the amounts awarded in respect of each item from the date when and if payment of such fees was made, up to and including the day immediately preceding the date on which payment of compensation is made.

(J.J. Trickett)

**Member of the Land Court**