boats. I assess the damage as £50 for the first boat and £35 for the second boat, a total of £85, taking into account the wear and tear. As regards arrears I am not satisfied the defendants are liable for any. I will therefore award no amount for arrears of rent and loss of rent. There will be damages of £85 and costs.

Judgment for the plaintiff.

JOHN and ANOTHER *v.* ATTORNEY-GENERAL

SUPREME COURT (Luke, Ag.J.): March 24th, 1952
(Civil Case No. 369/51)

[1] **Land Use Planning—compulsory acquisition—compensation—disputed assessments—factors to be considered by court in ascertaining quantum:** While the general rule is that compensation for compulsorily acquired land is based on the market value of the land in its actual condition at the date of expropriation if sold by a willing seller, the court, in ascertaining that value, must consider every element of value which the land possesses, including the owner's actual use of it and all its potentialities but excluding any advantage due to the carrying-out of the scheme for which it was compulsorily acquired, and may have regard to any loss of business and goodwill by the owner; in other words the owner receives what the land is worth to him, not the purchaser, in money terms so that his property is not diminished in amount but only changed in form (page 214, line 24—page 216, line 22).

[2] **Land Use Planning—compulsory acquisition—compensation—test of value—hypothetical sale:** See [1] above.

[3] **Statutes—interpretation—retrospective legislation—retrospective operation clearly intended or necessarily and distinctly implied must be given effect—statutes affecting vested rights or legality of past transactions or contracts especially restricted:** No statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the statute or arises by necessary and distinct implication, and this is especially so where the statute concerned would prejudicially affect vested rights or the legality of past transactions or impair contracts (page 217, lines 29–36).

[4] **Statutes—interpretation—statutes affecting existing rights—no retrospective effect unless clearly intended or necessarily and distinctly implied:** See [3] above.

[5] **Statutes—operation—retrospective effect—none unless clearly intended or necessarily and distinctly implied—statutes affecting vested rights**

or legality of past transactions or contracts especially restricted: See [3] above.

The applicants applied by motion for the court to determine what compensation was appropriate for property compulsorily acquired.

The owner of the property in question rejected an offer of compensation for its compulsory acquisition. On his death the applicants, who were granted probate of his will, claimed compensation not only for loss of the land itself but also for syenite, economic trees and cassava plants on it. The Supreme Court was asked to decide what compensation was appropriate in the circumstances of the case, and in doing so it considered the principles upon which compensation was to be assessed.

Cases referred to:

(1) *Cedars Rapids Mfg. & Power Co.* v. *Lacoste*, [1914] A.C. 569; [1914–15] All E.R. Rep. 571, *dictum* of Lord Dunedin applied.

(2) *Fraser* v. *Fraserville City*, [1917] A.C. 187; (1917), 116 L.T. 873, *dicta* of Lord Buckmaster applied.

(3) *Inland Rev. Commrs.* v. *Glasgow & S.W. Ry. Co.* (1887), 12 App. Cas. 315; 57 L.T. 570, *dicta* of Lord Halsbury, L.C. applied.

(4) *In re Lucas and Chesterfield Gas & Water Bd.*, [1909] 1 K.B. 16; [1908–10] All E.R. Rep. 251, *dicta* of Fletcher Moulton, L.J. applied

(5) *In re Public Lands Ordinance, 1924*, West African Court of Appeal, March 1945, unreported, *dictum* of Graham Paul, C.J. applied.

Zizer for the applicants;
M.C. Marke, Crown Counsel, for the respondent.

LUKE, Ag.J.:

This is an application by motion for the determination by the court of the value of land acquired by the Colonial Government through its competent officer, the Director of Surveys and Lands, under the Public Lands Ordinance (*cap.* 193) and the compensation to be paid to the claimants thereof.

The land which belonged to the late Reverend Ademu John was acquired on January 15th, 1946 as shown in Exhibit L. Up to the time of the death of Reverend John no compensation was paid because the offered price of £308. 11s. 6d., made up of 23·59 acres of land claimed and subject to satisfactory title being produced, was not accepted. Exhibit C reads:

	£.	s.	d.	
First zone (5 acres)				
at £30 per acre ...	150	0	0	
Second zone (18·59 acres)				
at £5 per acre ...	92	18	6	[*sic*]
Trees as per field				
book list ...	65	13	0	
	£308.	11s.	6d.	[*sic*]

Reverend John died on August 21st, 1947, and probate of his will was granted to two of the executors therein named, the present claimants, on October 31st, 1947.

The claimants, not having accepted the compensation offered, have made a counter-proposal claiming the sum of £36,986. 14s. 8d. as stated in a letter written by their solicitor dated August 16th, 1950 as follows:

	£.	s.	d.
23·59 acres @ 1d. per sq. ft.	4,281	11	8
Quarry of syenite	32,400	0	0
Economic trees	280	3	0
5 acres cassava crop	25	0	0
	£36,986.	14s.	8d.

The questions therefore to be determined by the court are:

(i) Whether the claimants have proved their title to the land.

(ii) The quantity of land acquired.

(iii) The value of the land.

(iv) Whether the claimants are entitled to be compensated for syenite as a separate item.

(v) Whether the claimants are entitled to be compensated for five acres of cassava plants.

(vi) The value of the economic trees which were on the land at the date of the acquisition.

Evidence was given that the testator acquired land some time in 1921, and that for over 12 years next prior to the acquisition he worked the land in various ways. This has not been disputed.

There is a dispute as to the acreage of land acquired. The claimants alleged that the land which was acquired was 23·59 acres as deposed by Sawyer, the surveyor who went to survey the land,

and by the Director of Surveys and Lands in nearly all subsequent correspondence. At the trial Mr. Stevenson, in plotting the land acquired on a plan, raised for the first time the point that the land claimed is two acres less than what the claimants' title deeds show. A report, required by s.17(f) of the Public Lands Ordinance to be written by the Director and put in evidence, showed the acreage as being 23·59 acres. The preponderance of evidence on this matter which came from the office of the Director established that the land acquired was 23·59 acres.

Having found as a fact that the land acquired was 23·59 acres, I now turn to the third question, the value of the land. The Director offered the sum of £242. 18s. 6d., whereas the claimants have submitted a claim at 1d. per sq. ft. (totalling £4,281. 11s. 8d.) and also a claim for a quarry of syenite amounting to £32,400.

The difference between the two amounts is so great as to leave the impression that either the Director is trying to pull a quick one over the claimants or the claimants are talking of something they know nothing about. Such being the case, it therefore becomes absolutely necessary to go very carefully into the principles which have been established in ascertaining and fixing the claims for properties acquired compulsorily as required by the Public Lands Ordinance.

Cripps on Compensation, 8th ed., at 172–173 (1938), states:

"When land is taken by a Government department or a local or public authority, the compensation is based on the amount the land might be expected to realize if sold in the open market by a willing seller."

6 *Halsbury's Laws of England*, 1st ed., at 36, para. 36, also states:

"In ascertaining the value of the land, all the actual use of it by the person who holds it and all its potentialities must be considered. In ascertaining the value to the owner in respect of its use by him, loss of business and of goodwill, in so far as they enhance that value to him, may be regarded."

In this light it may be necessary to consider a few decisions on this question of compensation on compulsory purchase. In the case of *Inland Rev. Commrs.* v. *Glasgow & S.W. Ry. Co.* (3), Lord Halsbury, L.C. stated (12 App. Cas. at 321; 57 L.T. at 571):

"My Lords, of course the word 'value' is itself a relative term, and in ascertaining what is the value of the land it is extremely common, indeed it is inevitable, to go into a great number of

circumstances by which that which is proper compensation to be paid for the transfer of one man's property to another is to be ascertained. A whole nomenclature has been invented by gentlemen who devote themselves to the consideration of such questions, and sometimes I cannot help thinking that the language which they have employed, so familiar and common in respect of such subjects, is treated as though it were the language of the legislature itself. We, however, must be guided by what the language of the legislature is. Now the language of the legislature is this—that what the jury have to ascertain is the value of the land. In treating of that value, the value under the circumstances to the person who is compelled to sell (because the Statute compels him to do so) may be naturally and properly and justly taken into account . . . . [B]ut in strictness the thing which is to be ascertained is the price to be paid for the land—that land with all the potentialities of it, with all the actual use of it by the person who holds it, is to be considered by those who have to assess the compensation."

Fletcher Moulton, L.J., in *In re Lucas and Chesterfield Gas & Water Bd.* (4), stated ([1909] 1 K.B. at 29–30; [1908–10] All E.R. Rep. at 255):

"The principles upon which compensation is assessed when land is taken under compulsory powers are well settled. The owner receives for the lands he gives up their equivalent, *i.e.*, that which they were worth to him in money. His property is therefore not diminished in amount, but to that extent it is compulsorily changed in form. But the equivalent is estimated on the value to him, and not on the value to the purchaser, and hence it has from the first been recognised as an absolute rule that this value is to be estimated as it stood before the grant of the compulsory powers. The owner is only to receive compensation based upon the market value of his lands as they stood before the scheme was authorised by which they are put to public uses. Subject to that he is entitled to be paid the full price for his lands, and any and every element of value which they possess must be taken into consideration in so far as they increase the value to him."

In *Cedars Rapids Mfg. & Power Co.* v. *Lacoste* (1), Lord Dunedin stated ([1914] A.C. at 576; [1914–15] All E.R. Rep at 573–574):

"(1.) The value to be paid for is the value to the owner as it

existed at the date of the taking, not the value to the taker. (2). The value to the owner consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined."

In *Fraser* v. *Fraserville City* (2), Lord Buckmaster stated ([1917] A.C. at 194; 116 L.T. at 260–261):

"The principles which regulate the fixing of compensation of lands compulsorily acquired have been the subject of many decisions, and among the most recent are those of *'In re Lucas and Chesterfield Gas and Water Board, Cedars Rapids Manufacturing & Power Co.* v. *Lacoste*, and *Sidney* v. *North Eastern Railway Co.'* The . . . substance of [these cases] is this: that the value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired . . . .

Their Lordships desire to add that it is plain, from the language of the statute making the award of arbitrators final and without appeal, that, apart from evidence establishing that the arbitrators had exceeded their jurisdiction, their award could not be disputed."

The claimants' case is that the land is worth the amount they have asked for, because it has syenite stones which had been worked and sold by the testator, and that the respondent has passed it on to the contractors building the deep water quay who have been carrying out in a modern manner what the testator did. They have also claimed over and above the value of land a rather large and, to say the least, fantastic sum for the syenite. This item comes under the fourth question which I shall deal with in the latter part of my judgment. In support of their claim as to the value, they gave evidence of properties in and around the neighbourhood and also that the testator did actual working of the syenite by breaking them, and put in evidence an agreement between the testator and one Mr. D.S. Benjamin (deceased) for cracking and carrying syenite stones from the said land.

The Director in his evidence said that in calculating the value of the land he took into consideration the nature of the land in that it is only a small parcel which can be regarded as poor agricultural land, and that the land slopes, thereby decreasing its value as a building site. Further he said that, according to the recent amend-

ment of the Public Lands Ordinance by the Public Lands (Amendment) Ordinance, 1946, s.2, no value was placed on the syenite which was found on the land.

Section 17 of the Ordinance, as amended, reads:

"In determining the amount of compensation to be awarded for land acquired under this Ordinance, the Court shall not take into consideration:—

. . .

(e) any increase to the value of the land or building acquired likely to accrue from the use to which it will be put when acquired;

. . .

(h) the special suitability or adaptability of the land for any purpose if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special need of a particular purchaser or the requirements of the Governor in Council."

Evidence was given, as I mentioned earlier, by the claimants showing that syenite stones were broken and sold by testator long before this property was acquired, and Mr. Zizer in his address stressed this point that it cannot be considered that it is a market for the special needs of a particular purchaser as the Director thinks. Even if syenite stones had not been broken and sold by testator on this land, this particular legislation will not be applicable to this acquisition on account of it having come into operation after this acquisition. This property was acquired in January 1946 and this amendment was passed on May 23rd, 1946.

It is a fundamental rule of English law, as found in *Maxwell on Interpretation of Statutes*, 7th ed., at 186 (1929)—"that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication." In *Maxwell*, at 187, is found the following: "It is chiefly where an enactment would prejudicially affect vested rights, or the legality of past transactions, or impair contracts, that the rule in question prevails."

I must however state that the claimants have exaggerated ideas of the value of their land and its potentialities. The principle on which compensation is based on such matters has been clearly stated by the cases already cited and I shall be guided by them. The greater portion of this land is neither a building site nor good

agricultural land, but it is land which has abundant potentialities in the nature of syenite, as some witnesses say an inexhaustible supply. Taking that into consideration, I assess the value of the land at £50 an acre. The value of the 23·59 acres will be £1,179. 10s. 0d.

[The learned judge then considered the other questions to be determined by the court, and continued:]

Having gone through all the facts which have come out in this case, I arrive at the following figures:

	£.	s.	d.
Item 1—23·59 acres of land @ £50 an acre ...	1,179	10	0
Item 2—*Economic trees*			
Mango trees			
26 large @ 30/- ...	39	0	0
6 small @ 10/- ...	3	0	0
Palm trees			
32 large @ £1 ...	32	0	0
250 small @ 5/- ...	62	10	0
Banana plants			
12 large @ 4/6d. ...	2	14	0
2 small @ 6d. ...		1	0
Locust trees			
4 large @ £1 ...	4	0	0
30 small @ 5/- ...	7	10	0
Pear trees			
5 small @ 15/- ...	3	15	0
Bush canes			
77 large @ 1/- ...	3	17	0
13 small @ 6d. ...		6	6
Grand total	£1,338.	3s.	6d.

The last question raised by Mr. Zizer was for 10% to be added to the compensation which will be awarded. In March 1945 Graham Paul, C.J. in *In re Public Lands Ordinance, 1924* (5), in reply to this question of 10% over and above the award, said: "It is suggested by the claimants' counsel that 10% above the market value should be allowed for all items of the claim. The Ordinance gives me no power to award such an allowance so that legally I cannot do so."

Therefore such a request cannot be granted. There will be no order as to costs.

Order accordingly.

HASHIM *v.* S.C.O.A.

SUPREME COURT (Beoku-Betts, J.): April 1st, 1952
(Civil Case No. 143/50)

[1] **Agency—authority of agent—limits of authority—agent presumed to have no authority to pledge credit of foreign principal even if named—presumption rebutted if privity of contract between principal and third party or by evidence of contrary intention:** An agent of a foreign principal is presumed to have no authority to pledge the credit of his principal so as to establish privity of contract between the principal and a third party, and the agent is presumed to contract personally even if he discloses the name of his principal; but the agent is not personally liable where the foreign principal is in fact brought into privity of contract with the third party, or there is evidence of a contrary intention in the contract itself or in the surrounding circumstances (page 221, line 39—page 222, line 8).

[2] **Agency—duties and liabilities of agent—liability in contract—agent signing contract in own name prima facie personally liable—circumstances in which agent exonerated:** *Prima facie*, an agent is personally liable on a contract if he puts his unqualified signature to it, and can be exonerated from liability only where the contract as a whole shows that he contracted as agent only and did not undertake any personal liability; but an agent who claims he is contracting only as an agent will not be exonerated if the contract clearly involves his personal liability, or he is shown to be the real principal, or the principal named by him is non-existent or is incapable of making the contract in question (page 221, lines 9–19; page 222, lines 9–12).

[3] **Agency—duties and liabilities of agent—liability in tort—agent liable to third party for wrongful act in course of employment whether or not act expressly authorised or ratified:** An agent who commits a wrongful act in the course of his employment is personally liable to a third person who suffers loss or damage thereby, notwithstanding that the act was expressly authorised or ratified by the principal (page 223, lines 16–29).

[4] **Evidence — presumptions — presumptions of fact — agent of foreign principal presumed to contract personally even if principal named—presumption rebutted if privity of contract between principal and third party or by evidence of contrary intention:** See [1] above.