

however, to find anything in this case to justify the decision arrived at by the arbitrator. On the other hand, it was the duty of the arbitrator to have taken into account the probability, or, as he puts it, the certainty, of the by-law being repealed in the near future. Even apart from what he states was the reason for its being passed, the evidence shews that, from the rapidly changing nature of that part of the city, it was only a question of a short time when that part of St. Clair avenue would cease to be a purely residential neighbourhood, and such a by-law would require to be amended or repealed; and this is a matter which, the authorities shew, the arbitrator should take into account. Even when it is contingent or uncertain, it is an element which he should take into his consideration—or, as put in one of the cases, when they are “reasonably fair contingencies.” For illustration of these rules see *Hilcoat v. Archbishop of Canterbury*, 10 C.B. 327; *Re City and South London R.W. Co. and St. Mary’s Woolnoth*, [1903] 2 K.B. 728, [1905] A.C. 1; *Ossalinsky v. Manchester*, approved in *Re Lucas and Chesterfield*, [1908] 1 K.B. 16; *Browne and Allan on Compensation*, 2nd ed., p. 102; *Cripps on Compensation*, 5th ed., p. 117.

It would, indeed, be a gross abuse of the powers conferred upon the city corporation, if it should be able to use such powers to depreciate the value of property which it was about to acquire.

It was also urged on behalf of the city corporation that, even if the by-law of the 23rd June, 1911, were not an insuperable obstacle in the way of the appellant, the possibility of his being able to use the land in question for stores at some future date is too remote to found a claim for compensation upon. Some of the expert witnesses speak of its being likely to be profitably used for such a purpose “in the near future;” another says in “eighteen months at the very latest;” while others speak more or less indefinitely as to the prospects. The authorities above-cited shew that a much more remote period, and even greater contingencies, are proper matters for arbitrators to weigh and take into account.

The appeal in this case should, consequently, be allowed, and the award referred back to the arbitrator that he may take the foregoing matters into account, with the right to hear further evidence if he considers the same to be necessary or desirable.

HODGINS, J.A., gave reasons in writing for the same conclusion.

GARROW and MAGEE, JJ.A., also concurred.

*Appeal allowed with costs.*