Added to these rules were refined decisions which have all been subject to further interpretation. We had the case of *Vezina v. the Queen* (1889, 17 SCR), which deals with the value of the land at the date of the expropriation—the value to the owner, not the taker. The Supreme Court of Canada had held that where land is taken by a railway company for the purpose of using the gravel thereon as ballast, the owner is only entitled to compensation for the land so taken as farmland, where there is no market for the gravel. This case was treated as overruled by the court in *Fraser v. The Queen* on the ground that the judgment was inconsistent with the subsequent judgment known as the Indian case, which was decided upon previously by the Judicial Committee of the Privy Council of Great Britain.

In the *Fraser* case, with Judson, J. dissenting, the court awarded over $360,000, which was $300,000 more than the Exchequer Court had awarded, for the 12.8 acres expropriated out of Porcupine Hill on the ground of its special adaptability as a source of rock for the causeway across Canso Strait, for which purpose the federal government expropriated the acreage. What really happened there? The court supplied flexibility. They may have gone a little far. They said that if you have two pieces of land, land A and land B, and the material necessary for the project was in land A and there was none in land B, the owner of land A was entitled to more compensation. Under the code as set out in clause 24 (9)—and this is really very technical—this has been done away with. They are all treated equally, no matter what is under the land or on it; all the land is treated as waste land.

So I say that the common law is far more flexible. To my mind it is more fair to the owner who lost his land, and it is also more fair to the taxpayer because a reasonable market value is paid at the time of taking. Of course, everybody agrees that the owner is not entitled to have the price enhanced because the taker wishes to buy the land for a certain project. But if that land is unique in that it has material necessary for a project, why should not the owner of that land be compensated for what he has either on the soil or underneath it? Surely that is a reasonable proposition.

Mr. Justice Ritchie of the Supreme Court of Canada, in dealing with the rules in *Cedar Rapids v. Lacoste*, namely, the imaginary market which would have ruled had the land been exposed for sale before any undertakers had secured the powers which made the undertaking as a whole a realized possibility, distinguished the *Fraser* case on the facts, stating that the federal government always had these powers and was not an undertaker who had to secure such powers. Let me shorten this to say that in other words we have to consider the imaginary market value of that land prior to the takeover, and we have to set up an imaginary purchaser at that time. Lands are valued in that fashion.

One of the most customary methods of appraising land is to go into a community where land has been taken or expropriated for a public purpose, or according to the federal statutes for use for a public purpose, and find out at the time of the taking what lands of a similar kind, under similar circumstances would have sold for. In taking a group of sales at that time, you come up with certain percentage per acre, and that is the value put on the land. That is the common law principle. To me this seems far better than setting down hard and fast rules, the interpretation of which every lawyer today disagrees with. None of the lawyers at the Canadian Bar Association meeting agreed with this meaning. I imagine that in the next five years lawyers will have a field day putting an interpretation on the meaning of the code.

That is why I would like to see the proposal abolished. It will not hurt the act. The act has many good parts in it, and the minister should be congratulated for bringing it in. He should reconsider his position on the formula for the expropriation proceedings, and the fact that the common law rules, in setting the quantum of compensation, were far better than a code which would be subject to appeals back and forth from decisions of the Supreme Court of Canada, which decisions will be refined and distinguished in other cases for the next ten years. For almost 100 years now we have been codifying rules of common law because of the case law. Therefore, why should we set down a whole set of new codes and terms which as I have proven, will discriminate against some people under similar circumstances?

To return to Mr. Justice Ritchie, I quote him as follows:

> The value must be tested in relation to the market which would have ruled had the land been exposed for sale before the powers of expropriation had been exercised.

That is the general rule which is known by all lawyers, all appraisers, and by laymen as