

Senator Flynn: I remember the famous case of *Fraser*.

Hon. Mr. Turner: I was in that case.

Senator Flynn: You will remember the difference between the final decision of the Supreme Court of Canada and the decision of the trial court. I believe it was 50 times more than the amount assessed by the trial court.

Hon. Mr. Turner: Of course, that did not go to a matter of intention. The reason we were able to persuade the Supreme Court to give so much to *Fraser* was that the Crown had a special use for the property, namely the building of the Canso Causeway.

Senator Flynn: That is why I suggest to you that if you offer \$50,000 to someone and he says that the property is worth \$300,000, and if the final judgment says that the offer is insufficient but the claim of \$300,000 is unreasonable, the expropriated party would not be allowed his costs, whereas if the difference between the two was only \$10,000 the interpretation on the wording of this amendment would be different. I suggest to you that it is the contestation itself that is of the essence, and not the amount which is claimed by the expropriated party in comparison to the amount offered.

Hon. Mr. Turner: I like your point, senator, and I think we have met it.

Senator Flynn: I am not satisfied. If you claim just a little more than what is being offered you will have a contestation.

Hon. Mr. Turner: Not necessarily. Mr. Munro points out that if an expropriated owner were to go for \$5,000 more than what was offered and were only to achieve that, the court might well hold in the circumstances that it was not reasonable to put the court to the test for such a difference. That is possible, but what we do not want to discourage is a reasonable claim. I feel that a reasonable claim can be assessed by a reasonable claim for compensation. Since the contestation is necessarily related to the compensation, and since the court will have to have an objective test, I would suggest to you that we get a more accurate reflection of what we want to achieve by relating it to the contestation rather than to the institution of proceedings.

Senator Flynn: I wanted to make it relevant to the evidence adduced by the expro-

propriated party. That is where we find the attitude of the expropriated party, to see whether it is reasonable or not. There is quite a difference. If I have an expert telling me that I should claim three times the amount offered, and he comes before the court and says "I believe in good faith that this man is entitled to three times what is offered", then I think that I should be allowed my costs in a case like that, even if I do not succeed. On the other hand, if I came for only \$5,000 more than \$100,000, and I brought no evidence to justify the additional \$5,000, then my contestation is not reasonable, and I should not be entitled to costs.

Senator Hayden: Mr. Chairman, I was wondering whether the minister would consider introducing the fictional reasonable man.

Hon. Mr. Turner: Of course, we have reason in here right now. That is the test that we have here. It might well be that a claimant is in perfect good faith in relying on an outrageous evaluation by a valuator who was trying to convince him.

I leave it to you, senators. I feel that the intention of the party in going to court, and the assessment of that intention as reasonable or not, is related directly to the amount of compensation which he is trying to obtain, because that is the only issue.

Senator Croll: Mr. Chairman, I will move the amendment.

Senator Flynn: Thank you, Senator Croll.

The Acting Chairman: I was directing myself to Senator Flynn who was dealing with the subject. I was hoping that he might move it.

Senator Flynn: I will leave the responsibility to Senator Croll since he is entirely satisfied with the wording, and I am not.

Senator Croll: No, it is your amendment.

The Acting Chairman: I would prefer directing myself to you, Senator Flynn. I would like to know if half a loaf is better than none. Would you be willing to move the amendment.

Senator Flynn: I am not inclined to move the amendment. I think it is an improvement, but I am not entirely satisfied. Since Senator Croll feels that everything is correct, I will let him move the amendment.