

Senator Flynn: Mr. Chairman, I think the amendment meets my point, but not entirely.

The Acting Chairman: I think your review appears on page 15 of the proceedings of March 18, 1970.

Senator Flynn: My idea was that I wanted to embody in the act the principle that, unless the contestation of the expropriated party was adjudged frivolous by the court, the expropriated party would be entitled to all his costs even if the amount determined by the court is the one offered by the expropriating party. In other words, if the offer was adjudged to be sufficient the expropriated party would nevertheless be entitled to his costs unless his contestation is adjudged frivolous by the court, the idea being that the expropriated party is entitled to disagree with the offer which is made by the expropriating party. If he does that in good faith he should not be penalized, or should not see his indemnity diminished by the fact that he would have to pay the costs.

The amendment which has been drafted by the department meets this to some extent. This is clause 36 (2) which reads:

Where the amount of the compensation adjudged under this Part to be payable to a party to any proceedings in the Court under section 29 in respect of an expropriated interest does not exceed the total amount of any offer made under section 14 and any subsequent offer made to such party in respect thereof before the commencement of the trial of the proceedings, the court shall, unless it finds the amount of the compensation claimed by such party in the proceedings to have been unreasonable, direct that the whole of such party's costs of and incident to the proceedings be paid by the Crown...

My objection is to the wording, "unless it finds the amount of the compensation claimed by such party in the proceedings to have been unreasonable". I do not think this is the test. Suppose he has asked for a lot more than is offered, but his contestation is made in good faith. He should not be penalized just because he asked for a lot more. I think it should read "unless it finds the contestation made by such party in the proceedings to have been unreasonable". The principle is in the contestation and not in the amount that is claimed by the expropriated party.

The Acting Chairman: I am drawing your attention, Senator Flynn, to page 15 of the

previous proceedings and the expression you used "that unless the contestation of the expropriated party is futile". You used the word "futile". You did not use the word "frivolous", which probably would be too broad.

Senator Flynn: I think it would be better if you replace "the amount of the compensation claimed by such party" by "contestation made by such party".

Senator Hayden: Mr. Chairman, I think the difference is that Senator Flynn thinks that the attitude of the contestant in approaching the contest is what should govern. If the offer is \$100,000, and finally there is an award of \$110,000—how do you determine whether an amount is unreasonable?

Senator Croll: Are we talking about unreasonable or unrealistic?

Senator Flynn: Unreasonable.

Senator Croll: How do you define "unreasonable"? You might be able to define "unrealistic". If something is worth \$50,000, and \$100,000 is asked, then it is unrealistic, and it may be unreasonable too. "Unrealistic" seems to me to be a more down-to-earth word.

Senator Flynn: If the experts of an expropriated party give the opinion to the court, and so advise their client, that in spite of the offer of \$100,000 by the expropriating party their client is entitled to \$200,000, and the court comes to the conclusion that \$100,000 is sufficient, then, in that case, the amount which is claimed by the expropriated party is so far away from the amount offered that it would be adjudged to be unreasonable. But I do not think this is the test. If he contests the amount offered, but adduces no further evidence, and if he does not show any good faith in the evidence which he brings before the court, then even if the difference is only \$10,000, I think the court should be entitled to punish him for this frivolous contestation, to use the word of Senator Phillips. In the other case that I mentioned it would be unreasonable not to allow him the costs just because the experts were so far apart in their assessment.

Senator Hayden: I am inclined to agree. The test should be the conduct of the contestant.

Senator Flynn: Yes, that is why I speak of contestation.