

only. Subsequently, however, certain changes in the work were made which resulted in such supply being permanently discontinued. These changes were made by the Crown, at the request of the suppliant, and others, for the purpose of developing the water power, of which the suppliant expected to obtain a lease on favourable terms. If the suppliant had obtained a lease of considerable power, as he had hoped to get, he would have been willing to release all claim for damage arising from the loss of the forty horse power supply of water he had under his first lease; but in the end the Minister of the Department of Railways and Canals was not able to lease the suppliant as much power as he had expected, and in accepting the lease of a smaller quantity of power it was agreed between him and the Department that his rights under the earlier lease should not be affected by the grant of the new one.

*Held*, 1. The suppliant was entitled to recover compensation for the loss of power to which he was entitled under the earlier lease.

2. The Court did not include in such compensation any claim for loss of profits or dissipation of business, because, on the one hand, in its inception the stoppage of water was lawful and within the lease, and there was no ground upon which such claim could be allowed except that founded upon a change in the works that was made in part at the instance of the suppliant and to meet his views, and wholly with his acquiescence and consent; while on the other hand he had at all times a well-founded claim either to have the power granted by the former lease restored to him, or to be paid a just compensation for the loss of it.

It was provided in the first lease that the suppliant would have no claim for damages in the event of a temporary stoppage of the water for the purpose *inter alia*, of improving or altering the canal. Upon the question whether the stoppage of the water supply for the period of two and one-half years, being the time actually necessary for the execution of the works for enlarging and improving the canal, would have been a temporary stoppage within the meaning of the former lease,—

*Held*, 1. Having regard to the subject matter of the lease, any stoppage of the supply of surplus water actually necessary for the repair, improvement or alteration of the canal, in the public interest, and to meet the requirements of the trade of the country, would be temporary within the meaning of the provision above referred to, although it might last for several years.

2. Upon the question as to whether the acceptance by the suppliant of the lease of 1901 worked a surrender of the grant of surplus water made by the former lease.