



Robert Boyd takes on Cleland, minor, and the Belfast and County Down Railway Company

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[Note: The following transcript, with its surfeit of commas, has hopefully been made more accessible for the reader by the editorial addition of many more paragraph breaks.]

THE BELFAST AND COUNTY DOWN RAILWAY COMPANY, v. ROBERT BOYD, Esq.

(This case of arbitration, which took place in Belfast, a few days since, is one of considerable interest, both on account of the amount of property involved, and the manner in which the question of tenant-right was raised.)

Mr HOLMES stated Mr. Boyd's case. It had, he said, been originally proposed by his client, that the entire questions at issue should be referred to the decision of the arbitrators, without the production of witnesses, and without Counsel on either side. The arbitrators were themselves competent to form a sound judgement after having viewed the property; and, on the part of Mr. Boyd, he now renewed his original proposition. (After some discussion, in the course of which Mr. Boyd complained, that he had never been apprised of the intention of the Company to produce witnesses until he had heard, a few days previously, that a number of persons had been inspecting the ground, Counsel, on behalf of the Company, insisted on tendering witnesses.)

Mr HOLMES then proceeded with the statement of the case. He said:— The lands of Bloomfield, in respect of which Mr. Boyd claimed compensation, formed part of the estate of the Cleland family, and are now the property of one of them, who is a minor. In January, 1845, part of the lands, containing 103 acres, 3 roods, 19 perches, Cunningham measure, on which the dwelling-house stands, had been set up to be let, for the term of seven years, under the Court of Chancery; and Mr. Boyd became the tenant, at gross rent of £410 per annum.

The dwelling-house was, at that time, in wretched repair. The land, also, was in a very bad state, requiring to be drained and improved, in a variety of ways, to make it profitable. A sum of £100 was, at the time of the letting, allowed, out of the minor's estate, for the purpose of putting the house and offices into repair, Mr Boyd being bound to expend an equal sum. It was soon found, however, that a much greater outlay was needed to put the house and offices into suitable condition; and after getting his lease, Mr. Boyd expended very large sums on the premises.

An application was then made to the Court, in the matter of Clelands, minors, for a reference to the Master, to ascertain whether, having regard to the expenditure in permanent and beneficial repairs and improvements then made, and in contemplation by Mr. Boyd, any and what allowance should be made to him; and whether it would be for the interest of the minor, and beneficial to his estate, that any portions of the land should be drained; and whether, on

the completion, of such repairs and drainage, and in consideration the rent, it would also be for the benefit of the minor, and his estate, that, in addition to the lease of the lands already granted to Mr. Boyd, a further lease should be given to him, during the minority of the minor, John Cleland, then in his tenth year.

An order of reference was accordingly granted by the Court; and on 18th of May, 1846, Master [Edward] Litton made his report, by which he found, amongst other things, that Mr. Boyd had then actually expended, on the dwelling-house and offices, in lasting and beneficial repairs and improvements, a sum of £1,000 and upwards; that Mr. Boyd was ‘anxious to put the dwelling-house and offices into thorough repair, and to effect a thorough drainage of the land, on obtaining a reasonable allowance therefor, and a lease thereof, during the minority of the said minor, who is now in his tenth year, as well to secure to the said Robert Boyd, a longer term than he now possesses in said lands, as to give the said Robert Boyd, his executors or administrators, the benefit of being a tenant in possession of said lands, at the termination of such minority, and secure to him the opportunity of treating for a lease thereof, for a further term.’

The report then found, that, according to a survey which the receiver over the lands had caused to be made, certain portions of the land would be much improved by drainage, at a probable expense of £469. 10s, being at the rate of £6 per Cunningham acre; that, in order to make such drainage effectual, it would be necessary to raise and make the banks of a river running along the lands, at an expenditure of about £120, ‘which drainage and embankment will be very beneficial to the estate, and will cause a permanent and lasting improvement’; that, having regard to and in consideration of the expenditure in permanent and beneficial repairs and improvements, then made and in contemplation by Mr. Boyd, an allowance of £200 for drainage and £200 towards the repairs, and a further allowance of £120 for remaking and raising the banks of the river, should be made to him, on the completion of the several improvements, above-mentioned; and, further, that on such improvement being completed, and in consideration thereof, it would also be for the benefit of the minor and his estate, that, in addition to the lease already granted to Mr. Boyd, a further lease, reserving the same rent, should be given to him, during the minority of the minor, on the terms therein mentioned.

Mr. Holmes proceeded – Such was the certain and undisputed title of Mr. Boyd to all the land, about to be taken by the Company (8A, 1R, 21P., Statute measures, with the exception of 1A, 1R., portion of a farm in the same townland, of which a Mr. Fitzpatrick had obtained a lease from the late Mr. Cleland, for two lives, still in being, or 31 years, from November, 1832. Mr. Boyd had purchased this farm, and had, also, drained and improved it.

He had not confined his improvements to the portions of the other lands referred to in the survey already mentioned. A greater quantity of land was found to require draining, and this had cost, at least, the sum mentioned by the Master, per acre. The throwing down of useless fences, filling-up of brick-holes, and a variety of other improvements, might be fairly estimated at £6 per acre, additional. There could not be a more complete farm than Mr. Boyd’s, in its present condition, and the land was suitable for a variety of purposes.

The railway would, however, run the entire way through it, and occasion injury, in many ways, for which he contended Mr. Boyd was entitled to compensation. The entire premises, held under the Court, including the house and offices, were subject to a lump rent; and it would be unfair to estimate the land only, as subject to this. The value of the building should

be estimated separately, and the surplus of the rent should be thrown equally over the remainder of the land. Mr. Boyd was entitled to whatever profit-rent there might be over that.

Counsel then referred to a recent purchase of a right of way across the lands of Bloomfield, made from the proprietor of the adjoining lands, as giving, to the arbitrators, some idea of the value of the property, enhanced, as it had been, by the hard money of Mr. Boyd. When he got it, it was in a wretched state. — He had improved it in every possible way, and it was now as complete a thing as any in the neighbourhood of Belfast — the most prosperous town in the empire.

Counsel repeated the particulars of Mr. Boyd's present tenure, stating that he had nothing to do but to apply for his lease during the minority, and continued: — Mr. Boyd has also, I submit to you, a right to have your value put upon what you consider that tenant's interest, which is respected in the Counties of Down and Antrim, and I wish it was respected all over Ireland — that preference which is given to every improving tenant in possession. Even a tenant from year to year is not turned out, without being allowed to dispose of his interest. There is no landlord in the country, I conceive, who has regard for his property, and who, taking into account the expenditure and improvements of Mr. Boyd, would not give him a preference, and a renewed interest, at a reasonable rent. Mr. Boyd is not only to be taken as having a certain interest, but also as having the probable interest of getting a lease for two lives, or 31 years.

Counsel then read several letters, addressed to Mr. Boyd by the Receiver on the estate, expressing, in complimentary terms, his approval of Mr. Boyd's great expenditure in the permanent improvement of the property, and his strong claims on the estate, etc. After recapitulating the several grounds on which Mr. Boyd claimed compensation, Mr. Holmes concluded his statement by calling on the arbitrators to give his client the fullest compensation to which they considered him entitled.

The following witnesses were then sworn, and examined on behalf of Mr. Boyd: —

Samuel Carse — Had been in the employment of Mr. Boyd, as land-steward, since he became the tenant of Bloomfield. Mr. Boyd had drained and otherwise improved the entire farm, with the exception of certain portions of the high ground. The drainage had, he considered, cost about £6 per Cunningham acre; and the levelling of useless fences and filling up of gripes and brick-holes, had cost about a similar sum per acre. Witness described the farm as a 'wilderness' when Mr. Boyd came to it, but it was now like a 'garden'. He likewise described the nature of the injuries which would be occasioned by the railway.

Mr. Alexander Montgomery, sen., Mr. [Daniel] Ferguson, Curator of the Botanical Gardens, and Mr. Thomas Jackson, were next examined, as to the value of the property, and with respect to the damages, etc.

Dr. Hodges was called to prove the quality of the soil in different parts of the farm, through which the railway is to pass. He considered that the portions of the farm, which were of a sandy or light soil, were not less valuable so near Belfast, than the stiff clayey land. The progress of the turnip had altered the comparative value of the different kinds of land; and the sandy soil, when highly manured, was well suited for green crops. In this moist climate, he considered it an advantage to have the land rather dry. In this part of the country, it was generally thought sufficient to manure land every fourth year; but in his opinion, it was better

that the manure should be repeatedly applied instead of being all put on in the one year. Forty tons to the acre was the usual allowance, but, of course, a great deal depended on the kind of manure.

Cross-examined by Mr GILMORE, Q.C. – The light soil requires full and frequent manuring, but it repays it. The differences between the value of it and clay has entirely disappeared under the modern system of cultivation.

The Master's report, the Receiver's letters, and other documents, were then admitted, by consent, and the case for the claimant closed.

Mr. GILMORE, Q.C., addressed the arbitrators, on behalf of the Company. He observed, that this case had commenced rather oddly. No objection had been made to the speeches of Counsel; but there had been every objection to the evidence of witnesses. It reminded him of the story told of the strolling players, who, in giving a representation of the play of *Hamlet*, had omitted the part of Hamlet, by 'particular desire'. The 'particular desire', in this case, was pretty much alike. This railway takes, from Mr. Boyd, eight acres and a fraction of good land, for which the company must pay. Of that there could be no doubt. The removal of fences had been alluded to, but the Company were not to remunerate Mr. Boyd for that. He had to removed them, for his own advantage, and converted them into arable land.

He has rendered his arable land more valuable than when he went to it; and he is entitled to a fair price for it. The question for the arbitrators was, what is its fair value? It has been argued, continued Mr. Gilmore, that a great part of the rent paid by Mr. Boyd is in consequence of there being a dwelling-house on the premises. The witness tells you, that there were no others at all, and that £1,000 has been expended by Mr. Boyd, in building offices, and repairing the dwelling-house; therefore, I say, that, when Mr. Boyd went into possession, he paid the full acre-able value of the land. The house was unfit for his occupation, until he had expended £1,000 pounds on it; and the land was not so good as it is now.

If he has made improvements, however, it was not entirely at his own expense; for he has got, in all, £620, out of the minor's estate. Now, it is in consideration of these improvements, that the lease, during the minority, was given to him; and he is bound, by his covenant, to keep up the house, offices, and drains, and all the improvements on the land. It will be for you to say whether, under these circumstances, the land must not have been the exclusive consideration, or nearly so, for the £410 rent. I believe the house was worth nothing but what Mr. Boyd made it worth. He got a ruin, but he got a large farm, at £410. We have been told what the immediate curtilage would be worth now. No doubt, the house is fit for the habitation of a gentleman; but what was it worth, when he went there? It will be for you to say, how much of that rent should be placed upon the land – how much upon the house and offices.

The Learned Gentleman next went on to refer to Mr. Boyd's purchase of Mr. Fitzpatrick's farm, as affording a guide to the arbitrators in making their calculations, and proceeded:— You have been told a great deal of the expectations which Mr. Boyd has, of obtaining a renewal of his lease, when the minor shall come of age. I think you will find some difficulty in calculating the value of that expectation. Who can say, whether the minor, when he attains the age of 21 years, will pay any regard to that thing which is called 'tenant-right'? Who can

say, whether the minor, when he attains that age, may not think proper to reside in that house himself?

Is it possible to foresee and put a value on the expectation that Mr. Boyd may have, of being continued the tenant, at the present rent? If you can put a value upon it, I don't say that you are not to do so, but I cannot conceive it possible to make a calculation of the feelings, temper, and disposition of a person now but eleven years old. What these may be, when he attains the age of twenty-one, must baffle all calculation.

The Learned Counsel dwelt, at some length, on the several grounds upon which damages were claimed, especially with respect to severance, and contended, that very little injury, if any, would be occasioned by it. The fields, it was true, would not be well shaped after the severance; but it was equally true, that they were not well shaped before. As to the crossings, Mr. Boyd would have three on the level including one across a public road, and, in addition, he would have a crossing, by archway, for his own exclusive use. These, he contended, were quite sufficient for all practical purposes. People who know nothing about railways, think of them something in the same way as one of the witnesses does of a ghost. They have no idea of one or other, but a great apprehension of both.

With respect to the purchase of the right of way, alluded to by Mr. Holmes, the purchase money had been given to get rid of a nuisance, and was no more a test of the value of the land than the price of a house, which was built on the land, would be. I don't deny, said the Learned Gentleman, that you must value Mr. Boyd's land as valuable land; but I do deny that, beyond the value of the land, he has any right to compensation. You have had the benefit of seeing the place yourselves; and, I have no doubt you are good judges of the value of land: that will enable you to reconcile any differences there may be between the testimony of the witnesses.

Mr. Ritchie, Mr. Hanson, Mr. Boyd, and Mr. Brassington, were then examined on behalf of the Company, merely as to the value of the land, and the compensation which should be given to Mr. Boyd for damages, etc. They differed considerably in their valuations, from the witnesses produced on behalf of Mr. Boyd.

The notice served, by the Company, on Mr. Boyd, offering him £600 for his interest in the land, and for compensation for all damages, was then admitted by consent, and the Company's case was closed, after which the arbitrators adjourned until next morning, when Mr O'HAGAN called on the Company's Engineer, Mr. Godwin, to state when the railway would be completed, as this was a matter of importance to one branch of the case.

Mr. GODWIN said, he could not, however, give any definite reply on this subject.

A discussion next arose, as to the apportionment of the rent; and it was ultimately agreed, that the Company should extinguish £24 16s 4d per annum of the rent hitherto paid by Mr. Boyd, they having already entered into an arrangement to that effect, with the agents for the Cleland estate.

Mr. O'HAGAN addressed the arbitrators, at great length, on behalf of Mr. Boyd. He would first observe, with respect to Mr. Gilmore's opening observation as to witnesses, that it was more humorous than wise. Mr. Boyd's view had been, to place himself in the hands of competent arbitrators, as no evidence could be more satisfactory than their own inspection of

the property. He had, however, reason to rejoice, that the Company had insisted on the production of witnesses, for a more suicidal course had never been adopted in any case. The witnesses whom they had produced had negated the statement of their Counsel, and had, in fact, strengthened the case of the claimant. Mr. Gilmore had taken this line:— He had told the arbitrators that Mr. Boyd was entitled to nothing from this Company but the value of his land. He was not aware what other loss there was. That was to say, that Mr. Boyd should get, according to the valuation of some of the Company's witnesses, £50, and of another, £81. That was what had been proposed to impartial arbitrators. Never was a proposition more completely overthrown by the evidence produced to sustain it.

Counsel referred to the different modes in which compensation had been given in other cases, in reference to compulsory sale; and contended that, with respect to severance and damages of various descriptions, a stronger case had never been presented to arbitrators, or a Jury. In some cases, there were compensating circumstances, such as the fact of having a station in the neighbourhood, or the converting of adjoining land into building-ground; but, was there, in the present case, one benefit, under the sun, that any human ingenuity could suggest, to compensate Mr Boyd?

According to the evidence of one of the witnesses, Mr. Boyd had found the property a 'wilderness', and has it now a 'garden'. Mr. Ferguson had stated, that there was no place like it in the country, and that it had reminded him of the Lothians. Mr. Boyd had spent a fortune in bringing it to its present condition, and wished to retain it, as he had created it by diligence, care, and skills. He did not want the Company to interfere with it, but they came there against his will, cutting up the farm from one end to the other. The Company's Engineer could not say how long it would require to complete the line; and, in the meantime, Mr. Boyd would be subjected to great annoyance. Railway labourers were the pleasantest fellows in the world – beautiful to see and hear, and just the kind of men one would like to trust with his property.

An attempt had been made to show, that the land in question must be of inferior quality, from the fact, that an enormous quantity of manure had been applied to it; but the evidence of Dr. Hodges would lead to the conclusion, that Mr. Boyd had put more manure upon the land than he need have done, unless he wished to make it as it is, without parallel in this country. And if he had thought proper to expend a fortune on it, and this Company chose to come and take it from him, it was not for them to taunt him with his expenditure. It was incumbent on them, in morals and in law, to give him full compensation.

The Learned Counsel ably reviewed the evidence which had been given on both sides, and called the attention of the arbitrators to the several ways in which Mr. Boyd's property would be injured. With respect to Mr. Boyd's tenure, the Learned Gentleman continued: I don't understand the Company's view. They don't object to admit the lease, but whether they say that Mr. Boyd is, or is not, entitled to more, I do not know. – On this subject, Mr. Gilmore was not explicit, but I will be so. Taking into consideration the Master's report, the agent's letters, and the probabilities of the case, Mr. Boyd thinks he would be grossly wronged, if you considered him entitled only to a lease during the minority.

You heard something of tenant-right from one of the witnesses – viz. that it depended very much on the improvements made. You understand tenant-right better than I do, and I think you will say, that if ever there was a case in which that right should be held sacred, between man and man, this is that case. If ever there was a case, in which a man was entitled from his landlord to an interest in the lands, this is one. If, after the encouragements to improve which

have been given to Mr. Boyd, he should be turned out at the end of the minority, gross injustice would be done to him.

There never was a case, in which a tenant could be more entitled, in justice, to a lease, than in the present. Mr. Boyd has expended upwards of £1,000 on the house and offices; the house, when he got it, having been described by Mr. Gilmore as a ruin. What has been expended upon the land I cannot, nor can Mr. Boyd, say; but, it has been proved, that £6 per acre for drainage, and £6 for levelling of useless fences, and filling up holes, etc., have been spent upon it, in addition to all the manure that was put on it. There has been enormous expenditure.

I would ask you, in point of fact and truth, as between man and man, do you think a stronger case, as to tenant-right, ever was made? What landlord would disregard such a claim? No Landlord who could hold up his head in the County of Down. (Mr. O'Hagan repeated the extract which Mr. Holmes had read, from the Master's report.) – I cannot tell you that this claim to tenant-right is a binding contract between parties which a Court would specifically perform; but it is something surely higher and more binding than that. The Master, by his report, encourages and authorises Mr. Boyd to improve; and, on the faith of that document, drawn up by the Master, and with the consent of the parties acting for the minor, Mr. Boyd goes on expending his money. If there had been anything wrong in that report, the minor's friends might have set it aside; but they have done nothing of the sort.

It is confirmed by the Court, encouraging Mr. Boyd to make his expenditure; and is he to be told, that, at the period when his expectations are likely to become fulfilled, when the purpose which he has cherished, and for which he has expended his thousands, is likely to be accomplished, his whole outlay is to be lost? In this, which above all the other cases I have ever heard of, entitles Mr. Boyd to tenant-right, is it to be said, that when a Company take his land from him, he is to be allowed nothing for that right?

If Mr. Gilmore's argument had been used in another Province, it might have weight, but here it can have none. The Learned Counsel referred to the estates of several landed proprietors in the Counties of Down and Antrim, where the tenant-right was observed. After alluding to Lord Castlereagh, on whom one of those estates is settled, he continued:– Who can assure you that he will respect tenant-right? But everybody will assure you that it is [a] matter of probability, because it is an equity, as certain as any law – the local equity of the country. Whatever applies to this case applies to every case of tenant-right in Ulster. You may doubt every man, but we must all act, to some extent, on probabilities. You may assume that, when the minor comes of age, he will have regard to the opinion of the country, and will recognise Mr. Boyd's claim to the tenant-right.

Mr. Fitzpatrick's lease of a portion of the farm in question, had been for two lives, or thirty-one years. Other leases of the same sort have been granted, on the same estate; and is Mr. Boyd unreasonable, when, after having made his farm as it now is, he asks you to come to the conclusion, that the minor will give him a lease for this period. – But, even if the minor should be disposed to do injustice, and to trample on all right, I doubt whether the law will allow him to do it. You must not shut your eyes to what is going on about you.

There is a strong probability, that the Legislature will, by that time, have made a change, which will entitle Mr. Boyd to compensation. – You are not to limit yourselves to what Mr. Boyd never considered himself limited to. The Company cannot say, that they don't

recognise tenant-right, for they have already done so. And, with respect to the minor, you must suppose, that he will be like other men, having the same feelings, and animated by the same impulses.

There is a well-grounded assurance, that Mr. Boyd will have the lease which he expects, and which others on the same estate have; and yet, in the entire of the evidence, on the other side, there was no allusion made to tenant-right. – All their calculations went on the assumption, that, in Mr. Boyd's case, justice would be outraged, and right would be set aside. I call on you not to rely on Mr. Gilmore's suggestion, that the minor would set justice at defiance. – It amounts almost to a certainty, that the minor will act as other men of his day and generation, and fulfil his duty to Mr. Boyd. I call upon you to assess the damages, not for the minority only, but, in addition, for that lease which, I am perfectly satisfied, Mr. Boyd will have, at the end of the minority.

The arbitrators sat, during the two following days, but were unable to agree on an award; and the matter was, accordingly, referred to an umpire, who awarded Mr. Boyd £700, with costs – the Company undertaking to extinguish £24 16s 4d per annum of his rent.

Counsel for the Company – J.B. Gilmore, Esq., Q.C., and Thomas K. Lowry, Esq.
Agent – Mr. William N. Wallace.

Counsel for Mr. Boyd – Robert Holmes and Thomas O'Hagan, Esqrs.
Agents – Messrs. Garrett.