

*ents Development Co.*, 283 U. S. 420, 421; *Concrete Appliances Co. v. Gomery*, 269 U. S. 177, 185.

*Affirmed.*

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DE LAVAL STEAM TURBINE CO. v. UNITED STATES.

CERTIORARI TO THE COURT OF CLAIMS.

No. 6. Argued October 16, 1931.—Decided November 23, 1931.

Pursuant to the Act of June 15, 1917, empowering the President "to . . . cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material," the Government took over by requisition the purchasers' rights in certain private contracts for the manufacture and sale of marine steam turbines. Before the contracts were performed, it canceled them.  
*Held:*

1. That the manufacturer was entitled to just compensation, as for property taken by eminent domain, not to damages as for breach of contract. P. 70.

2. Just compensation is the value of the contracts at the time of their cancellation. P. 72.

3. It does not include an allowance of anticipated profits. *Russell Motor Car Co. v. United States*, 261 U. S. 514. Pp. 70-72.

4. The fact that the contracts, if carried out, would have been profitable, must be given proper weight in determining just compensation. P. 70.

5. The Act cited applies expressly to contracts made before its passage. P. 73.

6. Such contracts are entered into subject to future exertion of the power of eminent domain. *Id.*

70 Ct. Cls. 51, affirmed.

CERTIORARI, 283 U. S. 814, to review a judgment fixing compensation for contracts requisitioned and afterwards canceled by the Government.

*Mr. John Spalding Flannery*, with whom *Messrs. George C. Holton, George F. Losche, and Frank F. Nesbit* were on the brief, for petitioner.

Before the requisitions, the purchasers had the right to look to the petitioner to build and deliver the turbine equipment, and were obligated to pay the petitioner the unpaid balance of the purchase price; and, correlatively, petitioner had the right to build the turbine equipment for the purchasers with whom it had contracted, in the manner, at the times and at the prices fixed by the contracts, and to demand and receive from the purchasers the unpaid balance of the purchase price as provided in the contracts, or, if they failed to pay it, to recover from them compensation by way of damages for breach of the contracts, which damages would include the profits petitioner would have realized by full performance. By the requisitions, the contract rights and obligations of the purchasers passed to the Government, *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106, and the purchasers were relieved of all their obligations under the contracts and petitioner was deprived of its corresponding rights founded on the purchasers' obligations. This situation was the direct result of the requisitions, and petitioner had no choice or say in the matter. *Liggett & Myers v. United States*, 274 U. S. 215, 220. The petitioner's contract rights went with the purchasers' rights and obligations just as in *Duckett v. United States*, 266 U. S. 149, the tenant's rights under its lease of a pier were taken when the Government took possession and control of the pier. *Monongahela Navigation Co. v. United States*, 148 U. S. 312; *International Paper Co. v. United States*, 282 U. S. 399.

By its requisitions, therefore, the Government took from petitioner:

(a) Physical property consisting of petitioner's materials acquired for use in manufacturing the turbines called for by the contracts.

(b) Intangible property consisting of petitioner's rights under the three private contracts. These rights were

definite, certain and non-cancelable. Such rights had a real and substantial value based upon the assured profits petitioner would have realized by performance.

Obviously petitioner's right to the compensation, assured to it by the Constitution, accrued by reason of the requisition and was not affected by what the Government did at a later date. *Russian Volunteer Fleet v. United States*, 282 U. S. 481. When the Government canceled the contracts, it did not thereby relieve itself of the legal consequences of its requisition. *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106, 122.

The *Russell Motor Car* case, 261 U. S. 514, deals with a cancellation by the Government of its own contract, whereas, in the present case, the three contracts involved are private contracts to which the Government was not, in any sense, a party.

The decision of this Court in that case, refusing to allow anticipated profits, was predicated upon the conclusion that the contract was entered into directly with the Government and, therefore, with the prospect of its cancellation in view, since the statute was binding and must be read into the contract, and the possible loss of profits must therefore be regarded as within the contemplation of the parties. In short, when the Russell Motor Car Company entered into its contract with the Government it impliedly agreed, because of the statute, that the Government should have the right to determine when the contract might be terminated. There was, therefore, a cancellation in the exercise of a contract right. In direct contrast, these three private contracts include no mutual agreement, express or implied, that the contracts may be terminated by either party.

The Court of Claims, in refusing to allow anticipated profits, misinterprets the decision of this Court in the *Brooks-Scanlon* case as holding that prospective profits constitute no part of just compensation in "such cases," to-wit, cancellation. But see page 123 of that report.

This error becomes more apparent when viewed in the light of the language of this Court in *Ingram-Day Co. v. McLouth*, 275 U. S. 471, 473.

The rule prescribed by this Court in the *Russell* case, that prospective profits are not to be included, is expressly confined in its scope and application to government contracts made after the enactment of the Act.

Any such limitation upon the obligation to pay just compensation for the taking or cancellation of private contracts results in a deprivation of the rights guaranteed by the Fifth Amendment to the Constitution. *Phelps v. United States*, 274 U. S. 341, 344.

Petitioner is entitled to just compensation in an amount which will put it in as good position pecuniarily as it would have been in if its contract rights and materials had not been expropriated. *Phelps v. United States*, 274 U. S. 341, 344; *Campbell v. United States*, 266 U. S. 368, 371; *Seaboard Air Line Ry. v. United States*, 261 U. S. 299, 304; *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106; *Liggett & Myers v. United States*, 274 U. S. 215; *United States v. New River Collieries*, 262 U. S. 341; *Monongahela Navigation Co. v. United States*, 148 U. S. 312; *Bauman v. Ross*, 167 U. S. 548, 574; *United States v. Chandler-Dunbar Co.*, 229 U. S. 53, 194.

In breach of contract and tort actions the same general principle that the injured party is entitled to compensation in money equivalent for the loss sustained is adhered to and applied. *United States v. Purcell Envelope Co.*, 249 U. S. 313; *United States v. Behan*, 110 U. S. 338, 344; *United States v. Spearin*, 248 U. S. 132, 135; *Guerini Stone Co. v. Carlin Construction Co.*, 248 U. S. 334, 347; Williston on Contracts, Vol. III, § 1338; *Standard Oil Co. v. Southern Pac. Ry. Co.*, 268 U. S. 146.

The just compensation should include the profits petitioner would have made by performance of the requisitioned contracts. Petitioner was deprived of the profits by the same acts of respondent that took the other prop-

erty for which allowance was made. Had there been no intervention by respondent, and had the purchasers failed to perform, such profits would certainly have been recoverable in an action for such breach, in their entirety, as an element of compensation for petitioner's loss. *Masterton v. Mayor*, 7 Hill. 61; *United States v. Behan*, 110 U. S. 338; *Hinckley v. Pittsburgh Steel Co.*, 121 U. S. 264; *United States v. Purcell Envelope Co.*, 249 U. S. 313.

Just compensation is compensatory in no truer or more exact sense than damages recoverable at law are compensatory. *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 329.

Does not the value of contract rights such as these depend upon their productiveness? And is not their ultimate productiveness to the seller what they will net to him? And what is better evidence of that than the profits they would have made for him?

The refusal of the Court of Claims to allow profits is in direct conflict with *American Hawaiian S. S. Co. v. United States*, 283 Fed. 535; appeal dismissed, 263 U. S. 727. See also, *United States v. New River Collieries Co.*, 262 U. S. 341, 343; *Campbell v. United States*, 266 U. S. 368, 371; *Phelps v. United States*, 274 U. S. 341; *Duckett v. United States*, 266 U. S. 149; *Booth & Co. v. United States*, 61 Ct. Cls. 805.

Whether a profitable contract be appropriated for use or confiscated for destruction; whether it be breached, abandoned, or canceled, under the uniform course of decision in this Court the measure of compensation is always the same—what it would have produced to the owner.

*Assistant Attorney General Rugg*, with whom *Messrs. Arthur Cobb, Bradley B. Gilman and Erwin N. Griswold* were on the brief, for the United States.

The petitioner suffered no loss because of the requisition. By that requisition the Fleet Corporation was sub-

stituted on the contracts for the original purchasers. The petitioner no longer could look to the private contractors for performance. Its rights were against the United States, a party at least as responsible financially as the original purchasers. Cancellation, not requisition, caused the loss to the petitioner for which it is entitled to just compensation. *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106; *Omnia Commercial Co. v. United States*, 261 U. S. 502.

In *Monongahela Navigation Co. v. United States*, 148 U. S. 312; *Duckett & Co. v. United States*, 266 U. S. 149; and *International Paper Co. v. United States*, 282 U. S. 399, the requisition of the third party's property resulted directly in the loss of property to the plaintiff. The requisition constituted a direct appropriation of the whole property, including the lesser estate of the claimant. But in the case at bar no property of the petitioner was taken; its rights against the purchasers were frustrated, and in their place were substituted rights against the United States.

After the passage of the Act of June 15, 1917, private parties were bound to know that under it the Government could modify, suspend, or requisition any contract for the production of war material. Under the rule of the *Russell Motor Car Co.* case, this statutory provision became a part of any subsequent contract.

As to the private contracts executed prior to June 15, 1917, the provisions of the Act of March 4, 1917, similar in effect to those of the Act of June 15, 1917, became a part of them. See *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106; *Grays Harbor Motorship Corp. v. United States*, 45 F. (2d) 259.

In any event the petitioner is not entitled to anticipated profits as compensation for the cancellation of its contracts, but only to the value of the contracts at the

date of the cancellation, and this sum was allowed by the Court of Claims. The statute, under which the duty to pay arose, obligates the Government to make "just compensation." This technical phrase, "just compensation," has been interpreted to include the value of the contracts at the date of cancellation and to exclude anticipated profits. The court below found as a fact that the value of the contracts at the date of cancellation was \$8,500.00. This amount was included in the award of compensation. *Russell Motor Car Co. v. United States*, 261 U. S. 514, 523; *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106, 123-124; *Monongahela Navigation Co. v. United States*, 148 U. S. 312; *Barrett Co. v. United States*, 273 U. S. 227; *College Point Boat Corp. v. United States*, 267 U. S. 12.

The petitioner confuses just compensation for the requisition of property, the measure of damages for breach of contract, and just compensation for the cancellation of contracts. The first includes no costs and expenses of the former owner. Damages for breach of contract include anticipated profits. This claim is one for compensation for a lawful cancellation. Many of the authorities relied on by petitioner are breach of contract cases. None are in conflict with the decision below.

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Attached to the brief for the United States was a statement by the Solicitor General:

It is not thought that the doctrine of *Russell Motor Car Co. v. United States*, 261 U. S. 514, can be so far extended as to import into the contracts of private parties a right of cancellation to be exercised by the Government in case of requisition, or that the requisition of the contracts for public use and the subsequent cancellation deprive the contractor of its contractual right to recover

the measure of damage which would have been recoverable upon breach by the original purchaser, unless the equivalent of such recovery be awarded as just compensation. These are the personal views of the Solicitor General. They do not accord with the considered judgment of the court below or with the views of counsel presented in the foregoing brief. The question is one of general importance which has not been determined in any other case and because of the constitutional rights involved should be determined by the judgment of this Court.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

Petitioner, a manufacturer of marine steam turbines, prior to January 12, 1918, had entered into thirteen written contracts with various firms and corporations for the manufacture of steam turbine propulsion units for ships. In the early part of 1918, after petitioner had commenced work under the contracts, the United States, acting through the Emergency Fleet Corporation, requisitioned these contracts, and advised the parties that it would make just compensation for the turbine equipment which the petitioner was required to complete, and that the Emergency Fleet Corporation would assume the responsibility of the contracts and make payment to petitioner.

The present controversy concerns three of these contracts (the other ten having been fully performed), the first for the construction of four marine turbine sets at the contract price of \$150,000, the second for the construction of ten marine turbine sets at the contract price of \$735,000, and the third for the construction of four marine turbine sets at the contract price of \$216,000. Petitioner continued to perform its obligations under these contracts as directed by the Fleet Corporation, for about a year, at which time, following the signing of the Armistice, it became necessary in the public interest to suspend op-

erations under the contracts, and, upon the several orders of the Fleet Corporation, petitioner suspended operations, stored the materials on hand, which had been assembled for the performance of the contracts, until January 14, 1920, when, by agreement, they were released from the effect of the requisition and were taken over by petitioner at an agreed salvage value.

The Fleet Corporation awarded compensation to petitioner, but the latter thought the award insufficient and sought by this suit in the Court of Claims to have the amount of just compensation determined. The Court of Claims gave judgment in favor of petitioner for its actual costs and expenditures over the cash payments received, amounting to \$116,231.66, together with \$30,000 damages for extraordinary expenses resulting from the stopping of work, and \$15,000 for expenses and rental incident to the storing of materials during the period after the order to stop work. From the total of these items, certain deductions, including a payment by the Fleet Corporation of 75% of the amount which it had awarded, were made, resulting in an award of \$84,074.34, with interest thereon from August 17, 1920. To this award the court added \$8,500, with interest from March 17, 1919, as the value of the three contracts at the time of their cancellation, and the loss sustained by the petitioner by reason thereof. According to the findings, the petitioner, if it had been allowed to complete the performance of the three contracts, would have realized a profit of over three hundred thousand dollars. But the court below declined to include any amount for anticipated profits. 70 Ct. Cls. 51.

The sole question presented for our determination is whether petitioner was entitled to an allowance of the amount, or any part of the amount, of these anticipated profits as a part of the just compensation.

In *Russell Motor Car Co. v. United States*, 261 U. S. 514, the contract involved had been made directly with the government for the manufacture of certain war supplies. Following the Armistice, and while the contract was in process of being performed, the Secretary of the Navy directed its cancellation. Suit was brought in the Court of Claims to recover just compensation. That court found that if the manufacturer had been permitted to complete the contract according to its terms, a very large amount would have been earned as profits, but refused to include in its award any part of these anticipated profits. We affirmed this determination and held that the statute, which empowered the President "(b) to modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material," applied to the government's own contracts as well as to private contracts, and that just compensation for the cancellation of such contracts should include "the value of the contract at the time of its cancellation, not what it would have produced by way of profits for the Car Company if it had been fully performed."

A distinction is sought to be drawn between the *Russell Company* case and the present case on the ground that there the contract was made directly with the government, and here they were made between private parties. The question, therefore, is whether this circumstance alters the rule in respect of just compensation. In determining that question the cardinal point to be borne in mind is that whether the contract requisitioned or canceled be one with the government or one between private individuals, the person whose property rights are taken or destroyed is entitled to receive just compensation, not damages as for a breach. A sufficient ground for the distinction lies in the fact that in the one case the requisition or cancellation is a

lawful act under the power of eminent domain, while in the other the act constituting the breach is unlawful.

In the present case the government requisitioned the purchasers' rights in the contracts, not for the purpose of putting an end to the contracts, but of keeping them alive for the benefit of the government. Its action being in pursuance of law, the government succeeded to all the rights of the purchasers under the contracts. The effect was the same as though the contracts had been assigned by the purchasers with the consent of the manufacturer. There resulted, by operation of law, a substitution of purchasers, and the government became possessed of the right to enforce the contracts as though it had been an original contracting party. In effect, the old contracts became new contracts between the government and the petitioner. See *F. Haag & Bro. v. Reichert*, 142 Ky. 298, 301; 134 S. W. 191. Compare *Wiggins Ferry Co. v. Ohio & M. Ry. Co.*, 142 U. S. 396, 408; *Chicago, R. I. & P. Ry. Co. v. Denver & R. G. R. Co.*, 143 U. S. 596, 608.

In this view, the government canceled its own contracts, and it is hard to see why the *Russell Company* case is not strictly applicable. Moreover, the Act of June 15, 1917, c. 29, 40 Stat. 182, authorized the President to cancel "any existing or future contract," etc., and this language, as we have held, applies whether the contract is with the government or between private parties. In either case, cancellation is an exercise of the power of eminent domain, and the liability of the government is for just compensation. There is no warrant for saying that the elements to be considered in fixing just compensation are different in respect of the two classes of contracts. The *Russell Company* case dealt with a government contract, but *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106, involved the requisition of a private contract, and this court, holding that the claimant was entitled to just compensation, defined the term as follows (p. 123):

“It is the sum which, considering all the circumstances—uncertainties of the war and the rest—probably could have been obtained for an assignment of the contract and claimant’s rights thereunder; that is, the sum that would in all probability result from fair negotiations between an owner who is willing to sell and a purchaser who desires to buy.”

Obviously, this does not justify the allowance of anticipated profits, although, of course, the fact that the contract, if carried out, would be profitable is one of the circumstances which naturally would be considered by one seeking an assignment of the contract, and must be given its proper weight in fixing just compensation. But that is very different from an *allowance* of anticipated profits as in the case of a breach. Whether the contract taken or canceled is one with the government or is a private contract, the result of the two cases is that just compensation means the same—“the value of the contract at the time of its cancellation, not what it would have produced by way of profits . . . if it had been fully performed.” *Russell Motor Car Co. v. United States, supra*, p. 523.

The court below found that the value of the contracts at the time of their cancellation and the loss sustained by reason thereof was \$8,500, and in its judgment included this amount as a separate item. In the course of its opinion the court said (p. 65) that the amount of this item was to be determined “from all of the facts and circumstances in the case which bear thereon, as shown by the evidence, and [the court] has fixed the amount thereof in the findings at \$8,500.” The amount, it is true, seems small, but the evidence is neither before us nor open for our consideration, and there is nothing in the findings which would justify this court in saying that the court below did not give weight to all proper elements entering into the determination of the amount of just compensation, including the fact that large profits would have

resulted from the full performance of the contract. To what extent, in the opinion of the lower court, the realization of profits was rendered highly improbable by other facts and circumstances does not appear and is not open to speculation. We perceive no basis for substituting our judgment in the matter for that of the court below.

The fact that the contracts were made prior to the passage of the Act of June 15, 1917, does not alter the situation. They were entered into subject to the power of Congress to enact legislation authorizing the government to take them over for its benefit, or to modify, suspend or cancel them, as required by the necessities of war, and an implied condition to that effect must be read into the contracts. See cases cited in *Omnia Co. v. United States*, 261 U. S. 502, 511-513. Congress, in the exercise of its lawful powers, provided by the act for such taking over, etc., and expressly included "existing" as well as "future" contracts. Whether the contracts here involved were entered into before or after the passage of that act, therefore, becomes immaterial. It is true that in the *Russell Company* case the contract was after the statute and it was said that the contract was entered into with the prospect of its cancellation in view, since the statute was binding and must be read into the contract; but it was not intended thereby, in the face of the precise terms of the statutory provision, to include within the reach of the implication only future contracts and exclude therefrom existing contracts. The contract there and the contracts here were entered into not only subject to statutes already in force, but to those which should thereafter be passed. *Louisville & Nashville R. Co. v. Mottley*, 219 U. S. 467, 480. In that case this court held that the prohibition of the Act of February 4, 1887, c. 104, § 2, 24 Stat. 379, as amended, prohibiting a carrier from charging compensation differing from that specified in its published tariff, meant that transportation should be paid for by all alike

and only in cash, and that it had the effect of rendering invalid a contract, valid when made, for the issue of free transportation. The court said (p. 482):

“The agreement between the railroad company and the Mottleys must necessarily be regarded as having been made subject to the possibility that, at some future time, Congress might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforceable or to impair its value. That the exercise of such power may be hampered or restricted to any extent by contracts previously made between individuals or corporations, is inconceivable. The framers of the Constitution never intended any such state of things to exist.”

There is nothing in the findings or in the circumstances to suggest that the manufacturer sustained any injury from the requisition itself, since the government undertook to carry out the contracts and its credit was certainly not inferior to that of the original purchaser. The injury resulted not from the requisition, but from the subsequent cancellation of the contracts.

*Judgment affirmed.*

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CHICAGO & NORTH WESTERN RAILWAY CO. *v.*  
BOLLE.

CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT.

No. 60. Argued October 28, 1931.—Decided November 23, 1931.

1. The test of whether an employee at the time of his injury was engaged in interstate commerce, within the meaning of the Federal Employers' Liability Act, is whether he was engaged in interstate transportation or in work so closely related to such transportation as to be practically a part of it. P. 78.
2. The plaintiff's employment, at the time of the injury, was confined to firing a stationary engine (or, as a substitute, a locomotive,)