

THE MANILA RAILROAD COMPANY, PLAINTIFF AND APPELLANT, VS. ROMAN A VELASQUEZ, MELECIO ALLAREY AND DEOGRACIAS MALIGALIG, DEFENDANTS AND APPELLANTS.

G.R. No. L-10278. November 23, 1915

Ponente: TRENT, J.

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TRENT, J.:

This action was instituted by the Manila Railroad Company for the purpose of expropriating twelve small parcels of land for a railroad station site at Lucena, Province of Tayabas.

The original defendants were Romana Velasquez, Melecio Allarey, and Deogracias Maligalig. After the filing of the complaint Simeon Perez, Filemon Perez, and Francisco Icasiano, having bought Romana Velasquez' interest, were included as defendants. The commissioners fixed the value of the twelve parcels at P81,412.75, and awarded P600 to Simeon Perez as damages for the removal of an uncompleted camarin. Upon hearing, the commissioners' report was approved and the plaintiff directed to pay to the "Tayabas Land Company" the total amount awarded, with interest and costs. The plaintiff company alleges that that amount is grossly excessive, pointing out that the land has never been used except for rice culture.

Upon this appeal we are asked to review the evidence and reduce the appraised value of the condemned land in accordance with our findings rendering judgment accordingly. Has this court, under the law, authority to take such action? And along with this question it must be decided whether the Courts of First Instance have such power over the reports of commissioners. Section 246 of the Code of Civil Procedure reads:

"Action of Court Upon Commissioners' Report.—Upon the filing of such report in court, the court shall, upon hearing, accept the same and render judgment in accordance therewith; or for cause shown, it may recommit the report to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part, and may make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken; and the judgment shall require payment of the sum awarded as provided in the next section, before the plaintiff can enter upon the ground and appropriate it to the public use."

From this section it clearly appears that the report of the commissioners on the value of the condemned land is not final. The judgment of the court is necessary to give effect to their estimated valuation. (*Crawford vs. Valley R. R. Co.*, 25 Grat., 467.) Nor is the report of the commissioners conclusive, under any circumstances, so that the judgment of the court is a mere detail or formality requisite to the proceedings. The judgment of the court on the question of the value of the land sought to be condemned is rendered after a consideration of the evidence submitted to the commissioners, their report, and the exceptions thereto submitted upon the hearing of the report. By this judgment the court may accept the commissioners' report unreservedly; it may return the report for additional facts; or it may set the report aside and appoint new commissioners; or it may accept the report in part or reject it in part, and "make such final order and judgment as shall secure to the plaintiff the property essential to

the exercise of his rights under the law, and to the defendant just compensation for the land so taken." Any one of these methods of disposing of the report is available to and may be adopted by the court according as they are deemed suited to secure to the plaintiff the necessary property and to the defendant just compensation therefor. But can the latter method produce a different result in reference to any part of the report from that recommended by the commissioner?

Section 246 expressly authorizes the court to "accept the report in part and reject it in part." If this phrase stood alone, it might be said that the court is only empowered to accept as a whole certain parts of the report and reject as a whole other parts. That is, if the commissioners fixed the value of the land taken at P5,000, the improvements at P1,000, and the consequential damages at P500, the court could accept the report in full as to any one item and reject it as to any other item, but could not accept or reject a part of the report in such a way as to change any one of the amounts. But the court is also empowered "to make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken." The court is thereby expressly authorized to issue such orders and render such judgment as will produce these results. If individual items which make up the total amount of the award in the commissioners' report could only be accepted or rejected in their entirety, it would be necessary to return the case, so far as the rejected portions of the report were concerned, for further consideration before the same or new commissioners, and the court could not make a "final order and judgment" in the cause until the rejected portions of the report had been rereported to it. Thus, in order to give the quotation from 246 its proper meaning, it is obvious that the court may, in its discretion correct the commissioners' report in any manner deemed suitable to the occasion so that final judgment may be rendered and thus end the litigation. The "final order and judgment" are reviewable by this court by means of a bill of exceptions in the same way as any other "action." Section 496 provides that the Supreme Court may, in the exercise of its appellate jurisdiction, affirm, reverse, or modify any final judgment, order, or decree of the Court of First Instance, and section 497, as amended by Act No. 1596, provides that if the excepting party filed a motion in the Court of First Instance for a new trial upon the ground that the evidence was insufficient to justify the decision and the judge overruled such motion and due exception was taken to his ruling, the Supreme Court may review the evidence and make such findings, upon the facts by a preponderance of the evidence and render such final judgment as justice and equity may require. So it is clear from these provisions that this court, in those cases where the right of eminent domain has been exercised and where the provisions of the above section have been complied with, may examine the testimony and decide the case by a preponderance of the evidence; or, in other words, retry the case upon the merits and render such order or judgment as justice and equity may require. The result is that, in our opinion, there is ample authority in the statute to authorize the courts to change or modify the report of the commissioners by increasing or decreasing the amount of the award, if the facts of the case will justify such change or modification. As it has been suggested that this conclusion is in conflict with some of the former holdings of this court upon the same question, it might be well to briefly review the decisions to ascertain whether or not, as a matter of fact, such conflict exists.

In *City of Manila vs. Tuason* (R. G. No. 3367, decided March 23, 1907, unreported), the Court of First Instance modified the report of the commissioners as to some of the items and confirmed it as to others. On appeal, the Supreme Court remanded the cause, apparently for the reason that the evidence taken by the commissioners and the lower court was not before it, and perhaps also because the commissioners adopted a wrong principle of assessing damages.

In *Manila Railway Co. vs. Fabie* (17 Phil. Rep., 206) the majority report of the commissioners appraised the land at P56,337.18, while a dissenting commissioner estimated it at P27,415.92. The Court of First Instance, after taking additional evidence upon the consequential benefits to the remainder of defendants' land by the construction of the railroad, and also as to the rental value of various pieces of land in the locality, fixed the value

of the land at the sum estimated by the dissenting commissioner. The defendants appealed to this court. This court remarked that the only evidence tending to support the 'majority report of the commissioners consisted of deeds of transfer of real estate between parties in that community showing the prices paid by the vendees in such conveyances. It was held that without its being shown that such transfers had been made in the ordinary course of business and competition, and that the parties therein stated were not fictitious, such deeds were incompetent as evidence of the value of the condemned land. As to the action of the court in fixing the price of the land at P27,415.92, the court said:

"Conceding, without deciding, that he also had the right to formulate an opinion of his own as to the value of the land in question, nevertheless, if he formulate such an opinion, he must base it upon competent evidence. The difficulty with the case is that it affirmatively appears from the record on appeal that there is an entire absence of competent evidence to support the finding either of the commissioners or of the court, even if the court had a right to make a finding of his own at all under the circumstances."

In *Manila Railroad Co. vs. Attorney-General* (22 Phil. Rep., 192) the only question raised was the value of certain improvements on the condemned portion of a hacienda, such improvements consisting mainly of plants and trees and belonging to a lessee of the premises. The total damages claimed were P24,126.50. The majority report of the commission allowed P19,478, which amount was reduced by the Court of First Instance to P16,778. The plaintiff company, upon appeal to this court, alleged that the damages allowed were grossly excessive and that the amount allowed by the commissioners should have been reduced by at least P17,000; while the defendant urged that the damages as shown by the record were much greater than those allowed, either by the commissioners or by the court. In disposing of the case this court said:

"The only ground upon which the plaintiff company bases its contention that the valuations are excessive is the minority report of one of the commissioners. The values assigned to some of the improvements may be excessive but we are not prepared to say that such is the case. Certainly there is no evidence in the record which would justify us in holding these values to be grossly excessive. The commissioners in their report go into rather minute detail as to the reasons for the conclusions reached and the valuations fixed for the various items included therein. There was sufficient evidence before the commissioners to support the valuations fixed by them except only those later modified by the court below. The trial court was of opinion that the price of P2 each which was fixed for the orange trees (naranjitos) was excessive, and this was reduced to P1.50 for each tree; this on the ground that the evidence discloses that these trees were comparatively young at the time of the expropriation, and that the value fixed by the majority report of the commissioners was that of full-grown or nearly full-grown trees. We are of opinion that this reduction was just and reasonable. Aside from the evidence taken into consideration by the trial judge we find no evidence in the record in support of the contention of the railroad plaintiff that the valuations fixed in the majority report of the commissioners and by the trial court are grossly excessive, and plaintiff company having wholly failed to offer evidence in support of its allegations in this regard when the opportunity so to do was provided in accordance with law, it has no standing in this court to demand a new trial based on its unsupported allegations of grossly excessive valuation of the property by the commissioners and the court below."

This court affirmed the finding of damages made by the trial court with the exception of an item for damages caused by fire to improvements on lands adjoining those condemned, which was held not to be a proper matter to be considered in condemnation proceedings. The court here approved of the action of the Court of First Instance in reducing the amount of damages fixed by the commissioners as to the value of the young orange trees on the strength of the evidence of record.

In *Manila Railroad Company vs. Caligsihan* (R. G. No. 7932, decided March 25, 1913, unreported), it appears that the lower court approved in toto the report of the commissioners. On appeal, this Supreme Court reversed

the lower court and remanded the case with orders to appoint new commissioners, saying:

"Under the evidence in this case the award is excessive. Section 246 of the Code of Civil Procedure giving to the court the power to 'make such final order and judgment as shall secure to the party the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken,' we exercise that right in this case for the purpose of preventing the defendants from obtaining that which would be more than 'just compensation' under all the evidence of the case.

"The judgment is reversed and the cause remanded, with instructions to the lower court to appoint a new commission and to proceed from that point de novo."

We will now examine the case (*Philippine Railway Co. vs. Solon*, 13 Phil. Rep., 34) relied upon to support the proposition that the courts should not interfere with the report of the commissioners to correct the amount of damages except in cases of gross error, showing prejudice or corruption.

In that case the property belonging to the appellant which the company sought to appropriate was his interest as tenant in a tract of land belonging to the Government, together with a house standing thereon and other property belonging to him. He asked that he be awarded for all the property taken P19,398.42. The commissioners allowed him P10,745.25. At the hearing had upon the report, the court reduced this amount and allowed the appellant P9,637.75. The commissioners took a large amount of evidence relative to the amount of damages. The testimony was conflicting as to the value of the house, two witnesses fixing it at over P12,000; another at over P14,000; one at P8,750; another at P6,250; and another at P7,050.95. The commissioners fixed the value of the house alone at P9,500, and the court at P8,792.50. This court said:

"Nor do we decide whether, in a case where the damages awarded by the commissioners are grossly excessive or grossly insufficient, the court can, upon the same evidence presented before the commissioners, itself change the award. We restrict ourselves to deciding the precise question presented by this case, in which it is apparent that, in the opinion of the court below, the damages were not grossly excessive, for its own allowance was only P1,000 less than the amount allowed by the commissioners, and the question is whether in such a case the court can substitute its own opinion upon the evidence presented before the commissioners for the opinion which the commissioners themselves formed, not only from that evidence but also from a view of the premises which by law they were required to make."

Referring to the manner in which the trial court arrived at its valuation of the various items, including the house, this court said:

"Without considering the correctness of the rule adopted by the court for determining the value of the property it is sufficient to say that the evidence before the commissioners as to the value of the property taken was contradictory and that their award was not palpably excessive or inadequate. Under such circumstances, we are of the opinion that the court had no right to interfere with it."

From the foregoing it is clear that (1) the testimony was conflicting; (2) that the award as allowed by the commissioners was well within the amounts fixed by the witnesses; and (3) that the award was not grossly excessive. That it was not grossly excessive is shown by the difference between the amount fixed by the commissioners and that fixed by the court, this difference being P1,117.50, a reduction of a little over 10 per cent.

In *City of Manila vs. Estrada* (25 Phil. Rep., 203), the city sought to expropriate an entire parcel of land with its improvements for use in connection with a public market. The commissioners, after viewing the premises and receiving evidence, being unable to agree, submitted two reports to the court. In the majority report the value of the land was fixed at P20 per square meter and in the minority report at P10. The Court of First Instance fixed the value at 1*15 per square meter. Upon appeal this court, after reviewing the evidence, held that P10 per square

meter was a just compensation for the land taken and rendered judgment accordingly, saying:

"After a careful examination of the entire record in this case and the law applicable to the questions raised therein, we are of the opinion that P10 per square meter is a just compensation for the land taken."

From the above review of the cases it will be seen that this court has not only not decided that the courts cannot interfere with the report of the commissioners unless prejudice or fraud has been shown, but the decisions, aside from the case of the City of Manila vs. Estrada, tend to show the contrary; that is, an award which is grossly excessive or grossly insufficient in the opinion of the court can be increased or decreased, although there be nothing which tends to indicate prejudice or fraud on the part of the commissioners. The case of the City of Manila vs. Estrada is direct authority supporting the conclusions which we have reached in the case at bar. And we are not without authority outside of this jurisdiction which supports the view we have taken in the case under consideration. In *Morgan's Louisiana & Texas R. R. Co. vs. Barton* (51 La. Ann., 1338), the court, in considering a procedural law similar to our own, stated:

"On the question of the value of the land, 8.34 acres, the commissioners have allowed \$2,500, or \$300 per acre. The defendant has put in the record the testimony of witnesses claimed to support the allowance. Without disregarding this testimony, it is sufficient to say that the opinions of the witnesses do not seem to be based on any fact calculated to show the value of the land. * * * On the other hand the plaintiff has placed before us the titles of defendant of recent date showing the price paid by him (the defendant) for the entire body of land of which the 8 acres are part; the acts of sale of land in the same neighborhood, and of the same quality; the assessment of defendant's property, and other testimony on this issue of value. * * * Giving all possible weight, or rather restricting the testimony of the plaintiffs' witnesses to its due influence, and giving, we think, necessary effect to the acts by which defendant purchased, the acts of sale of other land, the assessment of value, with due allowance for under assessment, and the other testimony of record, we reach the conclusion that the award gives two-thirds more than the value of the land. We fix the value of the land at \$833.33."

See also *T. & P. R. R. Co. vs. Southern Develop. Co.* (52 La. Ann., 535), where the court held the appraisal too low and after discussing the evidence, increased the amount of the award accordingly. A similar case is *Abney vs. Railroad Co.* (105 La., 446). See also *T. & P. R. R. Co. vs. Wilson* (108 La., 1; 32 So., 173); and *Louisiana Western R. Co. vs. Crossman's Heirs* (111 La., 611; 35 So., 784), where the point is touched upon.

In Missouri the statute (1 Mo. Ann. Stat., sec. 1268) directs that "the court shall make such order therein as right and justice may require, and may order a new appraisal, upon good cause shown." Owing to a constitutional restriction, this provision has been construed to apply only to damages and benefits resulting to land owners in consequence of proposed improvements, the cash value of property expropriated being an issue triable, at the instance of either party by a jury subsequent to the findings of the commissioners. Subject to this restriction, however, it has been held that the above provision of law gives the court the right to increase or decrease the amount awarded by the commissioners. In the late case of *Tarkio Drainage District vs. Richardson* (237 Mo., 49), the court presents a lengthy review of its decisions on this subject.

The question now arises, when may the courts, with propriety, overrule the award of the commissioners in whole or in part, and substitute their own valuation of the condemned property? We shall consider this question in two ways: first, as one of procedure under section 246, above quoted; and second, as to the evidence which must appear in the record in order to justify such action.

From a mere reading of section 246 and the remarks just made, it should be clear that the court is permitted to act upon the commissioners' report in one of several ways, at its own discretion. The whole duty of the court in considering the commissioners' report is to satisfy itself that just compensation will be made to the defendant by its final judgment in the matter, and in order to fulfill its duty in this respect the court will be obliged to exercise

its discretion in dealing with the report as the particular circumstances of the case may require. But generally speaking, when the commissioners' report cannot with justice be approved by the court, one of three or four circumstances will usually present itself, each of which has for its antidote one of the methods of dealing with the report placed at the disposal of the court by section 246. Thus, if it be successfully established that the commissioners refused to hear competent evidence material to the case, then all the evidence in the case would not be before the court. The court could not, with reason, attempt to either approve or change the report, as it stood, for the reason that all the evidence of the case would not have been considered by the commissioners nor have been presented to the court; and the remedy would be to "recommit the report of the commissioners for further report of facts." Again, if improper conduct, fraud, or prejudice be charged against the commissioners and this charge be sustained it would be safer to set aside the award thus vitiated and "appoint new commissioners" who could render a report not tainted by these things. But when the only error of the commissioners is that they have applied illegal principles to the evidence submitted to them; or that they have disregarded a clear preponderance of the evidence; or that they have used an improper rule of assessment in arriving at the amount of the award, then, in such a case, if the evidence be clear and convincing, the court should ordinarily be able, by the use of those correct legal principles which govern the case, to determine upon the amount which should be awarded without returning the report to the commissioners. When the matter stands in this light, it becomes the duty of the court to make "final order and judgment" in which the proper award will be made and thus end the litigation between the parties.

Now, what evidence as to value must the record contain in order to justify the court in disregarding the valuation fixed upon the condemned property by the commissioners and substituting therefor its own finding of value? It is almost a universal practice in the United States to submit the question of value in expropriation cases to a jury or commission, usually of local property owners, and one of the things they are specially instructed to do is to view or inspect the condemned property. The purpose of this view and the additional weight which should be given to the award of the appraisers because of the view are questions often discussed. After a careful examination of a number of adjudicated cases, we have concluded that the following cases, all agreeing in principle, correctly state the purpose of the view.

In *Denver Co. vs. Howe* (49 Colo., 256; 112 P., 779), it was said: "The jury viewed the premises and were better able to judge of the number of acres in each, as well as other conditions affecting the land. The facts ascertained by the view of the premises are not in the record, whether they were regarded as so much additional evidence, or were used to better understand and apply the evidence adduced at the trial. Keeping in view the evidence relating to the special value of the building site, the value of improvements and of the ground, it will be found that the verdict is within and supported by the values as testified to, and these values, as fixed by the several witnesses, represented to each the market value, as conceded by appellants. The verdict is supported by the evidence of market value and on that ground would have to be sustained if the matter complained of in the instruction had been entirely omitted."

In *Gorgas vs. Railroad Co.* (114 Pa., 1; 22 Atl., 715), it was said: "A view may sometimes be of the highest importance, where there is a conflict of testimony. It may enable the jurors to see on which side the truth lies. And if the witnesses on the one side or the other have testified to a state of facts which exists only in their imagination, as to the location of the property, the manner in which it is cut by the road, the character of the improvements, or any other physical fact bearing upon the case, they surely cannot be expected to ignore the evidence of their senses and give weight to testimony which their view shows to be false. * * * The true rule in such cases is believed to be that the jury in estimating the damages shall consider the testimony as given by the witnesses, in connection with the facts as they appear upon the view; and upon the whole case, as thus presented, ascertain the difference between the market value of the property immediately before and immediately after the land was taken.

This difference is the proper measure of damages."

In *Close vs. Samm* (27 Iowa, 503), subsequently approved in *Guinn vs. Railway Co.* (131 Iowa, 680, 683; 109 N. W., 209), it was said: "The question then arises as to the purposes and intent of this statute, it seems to us that it was to enable the jury, by the view of the premises or place to better understand and comprehend the testimony of the witnesses respecting the same, and thereby the more intelligently to apply the testimony to the issues on trial before them, and not to make them silent witnesses in the case, burdened with testimony unknown to both parties, and in respect to which no opportunity for cross-examination or correction of error, if any, could be afforded either party. If they are thus permitted to include their personal examination, how could a court ever properly set aside their verdict as being against the evidence, or even refuse to set it aside without knowing: the facts ascertained by such personal examination by the jury? It is a general rule certainly, if not universal, that the jury must base their verdict upon the evidence delivered to them in open court, and they may not take into consideration facts known to them personally, but outside of the evidence produced before them in court. If a party would avail himself of the facts known to a juror, he must have him sworn and examined as other witnesses."

In *C. K. & W. R. Co. vs. Mouriquand* (45 Kan., 170), the court approved of the practice of instructing the jury that their view of the premises was to be used, in determining the value of conflicting testimony, saying: "Had the jury disregarded all the sworn evidence, and returned a verdict upon their own view of the premises, then it might be said that the evidence which the jurors acquired from making the view had been elevated to the character of exclusive and predominating evidence. This is not allowable. The evidence of the witnesses introduced in the court on the part of the landowner supports fully the verdict. If the verdict was not supported by substantial testimony given by witnesses sworn upon the trial, we would set it aside, but as the jury only took into consideration the result of their view of the premises, in connection with the sworn evidence produced before them, to determine between conflicting evidence, the instruction was not so erroneous as to require a new trial."

In *Postal Telegraph-Cable Co. vs. Peyton* (124 Ga., 746; 52 S. E., 803; 3 L. R. A., N. S., 333), it was said: "A jury cannot be left to roam without any evidence in the ascertainment and assessment of damages. The damages which the law allows to be assessed in favor of a landowner whose property has been taken or damaged under the right of eminent domain are purely compensatory. The land actually appropriated by the telegraph company amounted to only a fraction of an acre; and while it appeared that the construction and maintenance of the telegraph line would cause consequential damages to the plaintiff, no proof was offered from which any fair and reasonable estimate of the amount of damages thereby sustained could be made. The jury should have been supplied with the data necessary in arriving at such an estimate. In the absence of this essential proof, a verdict many times in excess of the highest proved value of the land actually taken must necessarily be deemed excessive. Judgment reversed."

In New York, where the question has doubtless been raised more often than anywhere else, the late cases illustrate the rule, perhaps the most clearly. The appellate division, supreme court, in *In re Titus Street in City of New York* (123 N. Y. S., 1018), where it appeared that the city's witnesses testified that the property was worth \$9,531 and the commissioners awarded \$2,000 less, said:

"We do not think that this is meeting the requirements of the law; we do not believe that it is within the province of commissioners to arbitrarily set up their own opinion against that of the witnesses called by the city, and to award damages largely below the figure to which the moving party is committed, without something appearing in the record to justify such action. When a party comes into court and makes an admission against his interest, no court or judicial tribunal is justified in assuming that the admission is not true without at least pointing out the reason for discrediting it; it carries with it the presumption of truth, and this presumption is not to be overcome by the mere fact that the commissioners might themselves have reached a

different conclusion upon the viewing of the premises. * * * This view of the commissioners, it seems to us, is for the purpose of enabling the commissioners to give proper weight and effect to the evidence before them, and it might justify them in giving larger damages than some of the witnesses thought proper, or even less than some of them declared to be sustained, but where the evidence produced by the moving party in a proceeding for taking property for public purposes fixes a sum, without any disagreement in the testimony on that side, we are of the opinion that the cases do not justify a holding that the commissioners are authorized to ignore such testimony and to substitute their own opinion, in such a manner as to preclude the supreme court from reviewing the determination. That is not in harmony with that due process of law which is always demanded where rights of property are involved, and would make it possible for a corrupt commission to entirely disregard the rights of the individual to the undisturbed enjoyment of his property, or its equivalent."

From these authorities and keeping in mind the local law on the subject, we think the correct rule to be that, if the testimony of value and damages is conflicting, the commissioners may resort to their knowledge of the elements which affect the assessment and which were obtained from a view of the premises, in order to determine the relative weight of conflicting testimony, but their award must be supported by the evidence adduced at their hearings and made of record, or it cannot stand; or, in other words, the view is intended solely for the purpose of better understanding the evidence submitted. To allow the commissioners to make up their judgment on their own individual knowledge of disputed facts material to the case, or upon their private opinions, would be most dangerous and unjust. It would deprive the losing party of the right of cross-examination and the benefit of all the tests of credibility which the law affords. It would make each commissioner the absolute judge of the accuracy and value of his own knowledge or opinions and compel the court to affirm the report on the facts when all of such facts were not before it. The evidence of such knowledge or of the grounds of such opinions could not be preserved in a bill of exceptions or questioned upon appeal. It is no hardship upon any of the parties to require that the award must be based upon the evidence. It is the duty of each party to submit what evidence of value he has and if he fails to do so he can not complain if the appraisal is kept within the bounds of the evidence presented to the commissioners.

In those cases where the testimony as to value and damages is conflicting the commissioners should always set forth in full their reasons for accepting the testimony of certain witnesses and rejecting that of others, especially in those cases where a view of the premises has been made.

The commissioners are required by law to be disinterested landowners of the province, selected by the court with a view to their ability to arrive at a judicious decision in the assessment of damages. The judgment of men with these qualifications upon the price of real property is entitled to some considerable weight. Being local men, it may be assumed that they are familiar with the local land values, the needs of the community in that line, and the adaptability of particular sites to commercial purposes. Then, too, their view of the premises enables commissioners to better understand the evidence submitted to them, as we have said above. The declarations of witnesses as to the value of the land, as to its condition, or the conditions of improvements which may be located upon it, and comparisons made between the condemned land and other land in the vicinity may all be better understood by the commissioners if they have viewed the premises. It is, therefore, no slight divergence from the seeming preponderance of the evidence of record, as viewed by the court, which will justify the court in brushing aside the commissioners' report and appraising the property itself, based only upon a perusal of the evidence which was submitted to them. It is in those cases where the evidence submitted to the commissioners as to value varies greatly that the real difficulty lies. In these cases it is clear that some of the evidence must be untrustworthy. Hence, it is necessary to reject that evidence which shows the price to be greatly higher or lower than the just compensation to which the defendant owner is entitled. If, after making due allowance for the superior facilities which the commissioners had for arriving at the correct value of the property, the court is clearly of the opinion that the evidence relied upon by them is untrustworthy, and that other evidence rejected by

the commission and which fixes the value of the property at a figure greatly at variance with their valuation of the property bears the earmarks of truth, then it becomes the duty of the court to substitute for the commissions' award the amount indicated by such evidence. That the estimated value made by the appraisers is to be given "great weight;" that such valuation is not to be "lightly set aside;" that it will not be set aside "if there is substantial testimony to support it," unless error is "plainly manifest;" "unless it is apparent that injustice has been done;" "unless the commissioners have clearly gone astray or adopted erroneous principles;" "unless the commissioners acted upon wrong principles, or their award is grossly inadequate;" unless the award is "palpably excessive or inadequate;" unless it is "grossly inadequate or unequal," is the burden of all the cases.

Let us now examine the evidence, keeping these legal principles in mind. The only discussion of the evidence of value made by the lower court was as follows:

"To determine this question (the value of the land) the court abides by and refers to the report of the commissioners dated July 10, 1913, because it understands that it must accept this report in all its parts for the reason that the prices fixed in the said report of P3.75 per square meter for parcel 21-B, that of P3.50 per square meter for parcel 21-A, and that of P2 per square meter for the rest of the parcels (naming them) are reasonable and just; the compensation which is made in the said report for the damages occasioned to the defendant Simeon Perez being also reasonable and just."

It will be seen that the lower court relied entirely upon the findings of the commissioners. The commissioners justified their appraisal of the land at a price so greatly in excess of its value as agricultural land upon the following considerations. First, the construction of the provincial building and the high school had increased the price of land in their vicinity. Second, the neighborhood of these buildings had become a choice residential district. Third, the population in the vicinity had increased since it became known that the condemned property had been selected as a station site by the railroad company. We propose to discuss the evidence of value precisely along these lines, starting first, however, with its value as agricultural land, the only use to which it has ever been put.

The condemned land is not located in the commercial district of the town of Lucena, but is located near the provincial building and the high school. The land has been used from time out of mind solely for the cultivation of rice. Deogracias Maligalig, one of the defendants, testified that rice land in the municipality of Lucena was worth P500 per cavan (hectare). Melecio Allarey, another defendant, testified that such land was worth from P300 to P400 per hectare. Agustin testified that such land was worth between P400 and P500 per hectare if not under irrigation, and if under irrigation, more than P1,000. Ambrosio Zaballero, owner of more than 30 parcels of land in the municipality of Lucena, said that the site of the railroad station was nothing but a rice field prior to the coming of the railroad, worth from P300 to P400 per hectare. Cayo Alzona, the only witness for the plaintiff, testified that, in Candelaria, rice land was worth between P200 and P250 per hectare, he having purchased an uncleared parcel of rice land for P150 per hectare. It seems fair to accept the statement of the two defendants, Maligalig and Allarey, and fix the price of the condemned land for agricultural purposes at P500 per hectare.

Witnesses for the defendants, including three of the latter, fixed the value of the condemned land at prices ranging from P5 to P8 per square meter. The remaining defendant, Icasiano, did not testify before the commissioners. But in his answer filed about seven months after purchasing the land for P0.81 per square meter, he alleged that his parcel was worth P5 per square meter. So that we have all of the defendants and several other witnesses estimating the value of the condemned land at about the same figure, or from P50,000 to P80,000 per hectare.

The defendant, Melecio Allarey, testified that he owned 30,000 square meters of land in the vicinity of the railroad station site, 2,895 square meters of which was wanted by the plaintiff company. Upon being asked what the value of his land was, he promptly replied that it was worth P5.50 per square meter. Asked if he were making

his will whether he would list this property at a total value of P150,000, he evaded a direct reply by saying that he would divide it among his children. Asked if he considered himself the owner of land valued at P150,000, he replied that for his purpose he figured on that price. Asked if he would declare the land to be worth that sum in his sworn tax declaration, he replied that he would accept the figures fixed upon by the tax appraisers. His testimony shows clearly that he did not desire to commit himself positively to the assertion that his three hectares of land was worth P150,000. His ambiguous and evasive replies on cross-examination do not at all harmonize with his unequivocal statement in his direct examination that his land was worth P5.50 per square meter. Apparently, when confronted with the price per hectare, which this estimate would put upon his land, he was somewhat astounded. Indeed, we are inclined to believe that one of the reasons for the high value placed upon the condemned land by all the witnesses is that they were estimating the price per square meter instead of per hectare, which is the customary method of fixing the price of agricultural land. A perusal of the remainder of the testimony of defendant AJlarey shows that he is paying annual taxes on his 30,000 square meters of land amounting to between P12 and P13. He also naively informs us that he has not been able to till the land lately because he has no carabaos or other work animals.

Several of the witnesses for the defendants testified to having purchased land in the vicinity of the station site for residential purposes. Thus, Edard testified that he paid P1,400 for 220 square meters in 1910. Andres Dinlasan sold 119 square meters for P10 per square meter on June 6, 1912. He could give no reason why the purchaser had paid so much for the land, but in response to a question said the purchaser had some more land joining it. Agustin bought 1,900 square meters in 1910 for P2 per square meter. Esteban Lagos paid P1,000 for a plot 16 by 18 meters in 1911. A most remarkable thing about these purchases is that, as choice residential sites, they are so extremely small. With the possible exception of the parcel purchased by Agustin, the parcels in question are hardly generous enough to permit of the construction of even a modest mansion. Cayo Alzona testified that he purchased 2,200 square meters in 1906 for P350, and that he purchased a little less than one hectare in 1912, all in the vicinity of the station site, for which he paid P1,500. It will be noted that there is considerable difference between these figures and the prices at which the other witnesses testified they purchased land in that neighborhood. That the evidence of sales of nearby land was competent, there can be no doubt.

In *Aledo Terminal Ry. Co. vs. Butler* (246 Ill., 406; 92 N. E., 909), the court said: "Evidence of voluntary sales of other lands in the vicinity and similarly situated is admissible in evidence to aid in estimating the value of the tract sought to be condemned, but the value of such testimony depends upon the similarity of the land to that in question and the time when such sales were made and the distance such lands are from those the value of which is the subject of inquiry."

In an earlier case, the supreme court of Illinois stated the rule as follows: "The theory upon which evidence of sales of other similar property in the neighborhood, at about the same time, is held to be admissible is that it tends to show the fair market value of the property sought to be condemned. And it can not be doubted that such sales, when made in a free and open market, where a fair opportunity for competition has existed, become material and often Very important factors in determining the value of the particular property in question." (*Peoria Gas Light Co. vs. Peoria Term. Ry. Co.*, 146 Ill., 372; 21 L. R. A., 373; 34 N. E. 550.)

The supreme court of Massachusetts, in *Fourth National Bank vs. Com.* (212 Mass., 66; 98 N. E., 86), affirms the rule as follows: "It long has been settled that in the assessment of damages where lands are acquired by eminent domain evidence is admissible of the price received from sales of land similar in character, and situated in the vicinity, if the transactions are not so remote in point of time that a fair comparison practically is impossible."

In *Hewitt vs. Price* (204 Mo., 31), it was said: "It is sufficient to say upon this proposition that the law is well settled in this State upon that subject, and while the value or selling price of similar property may be taken into

consideration in determining the value of the piece of property in litigation, it is equally true that the location and character of such property should be similar and the sale of such other property should at least be reasonably near in point of time to the time at which the inquiry of the value of the property in dispute is directed."

In *Laing vs. United New Jersey R. R. & C. Co.* (54 N. J. L., 576; 33 Am. St. Rep., 682; 25 A., 409), it was said: "Generally in this and other states evidence of sales of land in the neighborhood is competent on an inquiry as to the value of land, and if the purchases or sales were made by the party against whom the evidence was offered it might stand as an admission. But such testimony is received only upon the idea that there is substantial similarity between the properties. The practice does not extend, and the rule should not be applied, to cases where the conditions are so dissimilar as not easily to admit of reasonable comparison, and much must be left to the discretion of the trial judge in the determination of the preliminary question whether the conditions are fairly comparable."

Evidence of other sales made in good faith is competent if the character of such parcels as sites for business purposes, dwellings, or for whatever other use which enhances the pecuniary value of the condemned land is sufficiently similar to the latter that it may be reasonably assumed that the price of the condemned land would be approximately near the price brought by the parcels sold. The value of such evidence, of course, diminishes as the differences between the property sold and the condemned land increase. The property must be in the immediate neighborhood, that is, in the zone of commercial activity with which the condemned property is identified, and the sales must be sufficiently near in point of time with the date of the condemnation proceedings as to exclude general increases or decreases in property values due to changed commercial conditions in the vicinity. No two estates are ever exactly alike, and as the differences between parcels sold and the land condemned must necessarily be taken into consideration in comparing values, we think it much better that those differences should be shown as part of the evidence of such sales, as is the practice in Iowa. (*Town of Cherokee vs. S. C. & I. F. Town Lot and Land Co.*, 52 Iowa, 279; 3 N. W., 42.) And where these differences are so great that the sales in question can form no reliable standard for comparison, such evidence should not be admitted. (*Presbrey vs. Old Colony & Newport R. Co.*, 103 Mass., 1.)

Aside from the bare fact that the real estate transactions referred to by the witnesses were somewhere in the vicinity of the condemned land, there is nothing to guide us as to the relative value of the condemned land. The differences which must have existed between the various parcels of land in the vicinity we are left to imagine. And while the commissioners' view of the condemned land undoubtedly assisted them in forming their estimate of value, still counsel should not have relied upon their astuteness to discover differences in values, but should have brought them specifically to the attention of the commissioners. It seems rather unusual, also, that the bare statements of witnesses should be accepted as to the prices which nearby parcels brought, in view of the insistence of counsel that the condemned land is nothing more than agricultural land. These sales should have been thoroughly investigated to determine whether they were made bona fide and, if so, whether they were not attended by unusual circumstances which materially increased the purchase price.

But while these transfers of nearby land are interesting as bearing upon the value of the condemned land, the record also shows several transfers of the latter itself after it became generally known that it had been selected by the railroad company as the site for its Lucena station. We take it that these transactions, in which the defendants were themselves parties, offer a far more certain basis for estimating the value of the land than do their testimony before the commissioners or the testimony of other witnesses as to fancy prices paid for neighboring parcels. Romana Velasquez, who owned the major portion of the condemned land, disposed of hers to her nephews sumamed Perez. Her first sale was on July 21, 1912. This parcel contained 16,094 square meters and brought at this time P6,500, or a little more than P0.40 per square meter. A month later Perez sold this parcel to one Icasiano

for P13,000, or a little less than P0.81 per square meter. Sra. Velasquez' next sale was of three parcels, the first two of which contained approximately 23,000 square meters, while the area of the third was described as three gantas of rice. The total price of the three parcels was P2,500 or a little over P0.10 per meter. In one of these parcels was located approximately 8,700 square meters of the condemned land which the commissioners reported at a price higher than any of the rest.

On May 26, 1913, Icasiano, the then owner of the parcel containing 16,094 square meters, sold it to the Tayabas Land Company for P18,000; and on July 1, 1913, some twenty days after the commissioners had rendered their report, all of the remaining owners of the condemned land sold their holdings, parcel by parcel, as it had been assessed by the commissioners, to the same company for P1.05 per square meter, with the exception of Simeon Perez who sold the two parcels owned by him at P2.27 and P2.11, respectively. Here is the most convincing argument that all the witnesses who placed values on the condemned property, ranging from P5 per square meter to P8 per meter, were seriously in error. After all the speculation concerning the land, after the commissioners had reported its value at prices ranging from P2 to P3.75 per square meter, the owners sold the land, parcel by parcel, as it had been assessed by the commissioners for a little more than P1 per meter, with the exception of Simeon Perez who accepted P2.11 and P2.27 for the two parcels which the commissioners had appraised at P3.50 and P3.75 per meter, respectively. It is unfortunate that the commissioners did not have an opportunity to consider the deeds executed by the defendants in favor of the Tayabas Land Company. With the commissioners' valuation of the land before them, the Tayabas Land Company was actually able to purchase from the defendant all of the condemned land at a greatly inferior price. The defendants were not able to resist an offer of P1 and P2 per meter for their holdings, notwithstanding their fervid declarations before the commissioners that their property was worth P5 per meter, and notwithstanding the official report by a board composed of local men that it was worth from P2 to P3.75 per meter. This, of course, does not include the defendant Icasiano who sold out to the land company after the commission had been appointed but before it had begun its labors. It is to be remembered, however, that he both bought and sold the land after the railroad company had made known its intention of expropriating it, and that in his answer to the complaint he alleged his land to be worth P5 per meter.

Now, what was the object of the Tayabas Land Company in purchasing the land? Evidently it was not with the intention of making any use of it, for the railroad company had long since taken possession. They, as well as the owners, were simply speculating on the probability that the award of the commissioners would be approved by the court. It was little more than a sporty guess on each side as to what would be allowed for the land by the final judgment of the court. The company believed the award would exceed P1.05 per meter, and the defendants thought the risk that the award would be in a lesser amount was so great that they let the land go for the price the company offered them. Nor is it at all certain that the prices inserted in these deeds of sale were not fictitiously inflated. The circumstances under which the sales were made would readily suggest the expediency of inserting fictitious prices in the deeds.

The moment a parcel of land is wanted by a public service corporation the price, for some occult reason, immediately soars far beyond what the owner would think of asking or receiving in the open market. Owners ask fabulous prices for it and neighbors look on with an indulgent smile or even persuade themselves that the land is worth the price for which the owner holds out—in view of the fact that it is wanted by a corporation, whose financial resources are popularly supposed to be inexhaustible. The resultant good to a community due to the investment of new capital, the increased employment of labor, and the services the corporation will render are for the moment forgotten; and persons called upon for opinions as to the price of the desired property, unconsciously perhaps, relax from that sound business acumen which guides them in their daily affairs, while they are considering, not the price which they would care to pay if they wanted the land, but the price which the corporation ought to pay in view of the fact that it is a corporation.

The owner of condemned land is entitled to just compensation. That is all the law allows him. "Compensation" means an equivalent for the value of the land (property) taken. Anything beyond that is more and anything short of that is less than compensation. To compensate is to render something which is equal in value to that taken or received. The word "just" is used to intensify the meaning of the word "compensation;" to convey the idea that the equivalent to be rendered for the property taken shall be real, substantial, full, ample. "Just compensation," therefore, as used in section 246 of the Code of Civil Procedure, means a fair and full equivalent for the loss sustained.

"The exercise of the power being necessary for the public good, and all property being held subject to its exercise when, and as the public good requires it, it would be unjust to the public that it should be required to pay the owner more than a fair indemnity for such loss. To arrive at this fair indemnity, the interests of the public and of the owner and all the circumstances of the particular appropriation should be taken into consideration." (Lewis on Eminent Domain, sec. 462.)

The compensation must be just to the public as well as to the owners. (Searl vs. School District, 133 U. S., 533; 33 L. ed. 740.) Section 244 of our code says that:

"The commissioners shall assess the value of the property taken and used, and shall also assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owners from the public use of the land taken."

"To assess" is to perform a judicial act. The commissioners' power is limited to assessing the value and to determining the amount of the damages. There it stops; they can go no farther. The value and damages awarded must be a just compensation and no more and no less. But in fixing these amounts, the commissioners are not to act ad libitum. They are to discharge the trust reposed in them according to well established rules and form their judgment upon correct legal principles. To deny this is to place them where no one else in this country is placed, above the law and beyond accountability.

There is no question but that the compensation to which a defendant owner is entitled is the market value of the condemned property, to which, of course, must be added his consequential damages if any, or from which must be deducted his consequential benefits, if any. Such was our holding in Manila Railway Co. vs. Fabie (17 Phil. Rep., 206). But, as stated in Packard vs. Bergen Neck Ry. Co. (54 N. J. L., 553; 23 A., 506):

"The difficulty is not with the rule, but with its application. For the determination of the market value of land, which is that sum of money which a person, desirous but not compelled to buy and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor, is beyond doubt difficult. The test is logically and legally correct, but is cannot be applied to land with the accuracy with which it can be applied to stocks, bonds and personal property generally. Still it is this test which admittedly must be applied, even when the value of the land and the damages are found in separate sums."

It is a very difficult matter to limit the scope of the inquiry as to what the market value of condemned property is. The market value of a piece of land is attained by a consideration of all those facts which make it commercially valuable. Whether evidence considered by those whose duty it is to appraise the land is of that nature is often a very difficult matter to decide. The Supreme Court of the United States, in a carefully worded statement, marks out the scope of the inquiry as follows:

"In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties. The inquiry in such cases must be: What is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted; that is to say, what is it worth from its availability for valuable uses?"

* * * As a general thing, we should say that the compensation to the owner is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future." (Boom Co. vs. Patterson, 98 U. S., 403.)

This passage is quoted with approval in the late case of St. Louis I. M. & S. R. Co. vs. Theodore Maxfield Co. (94 Ark., 135; 26 L. R. A., N. S., 1111; 126 S. W., 83), a very well considered case.

The supreme court of Missouri has also formulated an exceedingly clear statement of the matter in the Stock Yards Case (120 Mo., 541):

"The market value of the property means its actual value, independent of the location of plaintiff's road thereon, that is, the fair value of the property as between one who wants to purchase and one who wants to sell it; not what could be obtained for it in peculiar circumstances when greater than its fair price could be obtained; nor its speculative value; nor the value obtained through the necessities of another. Nor, on the other hand, is it to be limited to that price which the property would bring when forced off at auction under the hammer. The question is, if the defendant wanted to sell its property, what could be obtained for it upon the market from parties who wanted to buy and would give its full value."

These views are practically in accord with Lewis on Eminent Domain (2d ed.), section 478, where the rule is stated as follows:

"The market value of property is the price which it will bring when it is offered for sale by one who desires, but is not obliged to sell it, and is bought by one who is under no necessity of having it. In estimating its value all the capabilities of the property, and all the uses to which it may be applied or for which it is adapted are to be considered, and not merely the condition it is in at the time and the use to which it is then applied by the owner. It is not a question of the value of the property to the owner. Nor can the damages be enhanced by his unwillingness to sell. On the other hand, the damages cannot be measured by the value of the property to the party condemning it, nor by its need of the particular property. All the facts as to the condition of the property and its surroundings, its improvements and capabilities, may be shown and considered in estimating its value." (Approved in Seaboard Air Line vs. Chamblin, 108 Va.(42.)

Now, what was the utility of the land condemned? So far as the record shows, its possible uses were, first, for the cultivation of rice; second, as a residential site owing to its proximity to the provincial building and the high school; and third, as a railroad station site.

Its location from a farmer's point of view would doubtless enhance its value, since it was so close to the town of Lucena that the marketing of crops was a decidedly simple matter. For this reason it was more valuable as agriculture land than other farms farther away from town.

As a residential site it seems to have been so far a complete failure. How long the high school had stood there the record does not state. But although the provincial building had stood near it for several years, not a single homebuilder had selected any portion of the condemned land as a site for his residence. We note that all those who testified at the hearing before the commissioners to having purchased land in the vicinity for home sites, purchased other land than that condemned. Nor does the record contain any intimation that any of the owners of the land had ever attempted to dispose of any part of it as building lots. As a residential site, therefore, its value was decidedly problematical. Possibly, in the next dozen years a few houses might have been built upon the land, but, judging by the past record, its development along this line would have been extremely slow.

As a railroad station site, the record gives no indication that it is the sole possible location for that purpose in Lucena. It is not shown that its location for that purpose is at all superior to other possible locations. Indeed, it seems that the railroad company at first selected another site for its station on the other side of town. Hence,

possessing no exclusive natural advantages for this purpose, it is a foregone conclusion that the railroad company would not willingly pay P81,000 for such a site when it could have purchased another site for, say, P1,500.

Here it seems proper to say that the appearance of the railroad in the town of Lucena was the occasion for an incipient real estate boom in the vicinity of the provincial building and the high school. Several of the witnesses for the defendants testified what they would offer, if they were in the market for land in the vicinity of the station site, and the witness Alzona, the single witness who testified for the plaintiff, testified that some owners of land near the provincial building were asking between P500 and P700 for lots of 400 square meters. It is clear that these hypothetical purchases and sales do not offer any reliable basis upon which to calculate the actual market value of the land. The fond dreams of the owners of a sudden shift of the business center of the town of Lucena to their vicinity, or of its becoming a choice residential district, are not capital in hand.

"Proof must be limited to showing the present condition of the property and the uses to which it is naturally adapted. It is not competent for the owner to show to what use he intended to put the property, nor what plans he had for its improvement, nor the probable future use of the property. Nothing can be allowed for damages to an intended use." (Lewis on Eminent Domain, 2d ed., sec. 709.)

From the evidence we have discussed above, it is apparent that a good price for rice land in the vicinity of Lucena is P500 per hectare. With this as a basis, at what would the prospective buyer estimate the possibility of the land being used as a residential site sometime in the future and its possible advantages as a railroad site? Certainly at nothing like the estimates contained in the report of the commissioners. To secure an adequate return on such a large investment as P80,000, every meter of the land would have to be put to immediate use as residential sites, supposing that people could be induced to buy it for that purpose at such figures or to pay the necessarily large rent therefor based on such a valuation. And to hold out for such a figure in case a railroad company wanted the land as a depot site would mean that the company would locate its depot at some other place. It seems to us that, either as a residential site or as a railroad station site, its value should be principally regulated by the value of other agricultural land on the outskirts of the town. In other words, the chance that it would be wanted for either of these purposes owing to its superior location was but slightly greater than that of other agricultural land adjacent to the town. We are, therefore, led to the conclusion that the price at which practically half of the condemned land was sold by Romana Velasquez to the defendant, Filemon Perez, is a most liberal estimate of its value. We refer to her sale of the parcel of 16,094 square meters for P6,500. This parcel comprises practically one-half of the entire station site and no outside land was included in the transaction. The sale was made after it became known that the land sold was to be part of the station site, and a statement to this effect was included in the deed. Both parties being aware that the land was to be condemned by the plaintiff company, it cannot be said that they were not aware of all the latent utility of the land. For these reasons, the price which this parcel brought should serve as an excellent criterion of the value of the entire station site. And while no explanation is given of why the sale occurred, since, of course, no one would buy it with the expectation of using it himself when he knew that it would shortly be occupied by the railroad company, still there is not sufficient indication that it was sold for speculative purposes or that the element of speculation entered into the transaction to enable us to say that the price was inflated and exceeded the actual market value of the condemned land as agricultural land to be worth P500 per hectare, and leaves a little more than P3,500 for its potential value as a residential district and as a railroad station site. This is, furthermore, approximately 400 per cent higher than Sra. Velasquez' second sale (some four months later) to Simeon Perez, when she sold about 23,000 square meters in the same neighborhood for a little over P1,000 per hectare.

It is to be further noted that the average assessed valuation of the condemned property is somewhat less than P0.08 per square meter, while the highest assessed valuation of any of it is only P0.23 per square meter, which is

carried by some 5,973 square meters, or less than one-sixth of the whole. It is also to be noted that these 5,973 square meters were appraised by the commissioners as being worth exactly what the 16,094 square meters were worth, the latter being assessed for taxation purposes at only P0.03 per square meter.

At the price we have fixed, we are of the opinion that any consequential damages which may have been occasioned to any of the defendants by the condemnation proceedings is amply cared for.

The defendant, Simeon Perez, was awarded P600 damages by the commissioners for being compelled to remove a building in course of construction at the time the expropriation proceedings were started. This building was designed to serve partly as a warehouse and partly for stores. He commenced its construction about the middle of December, 1912, after it became known that the plaintiff company wanted the land for a railroad station. Construction work was ordered stopped by the court. From the vague description of this order in the record, we presume it was the order of the court of date of January 22, 1913, placing the plaintiff in possession of the land under the provisions of Act No. 1258 as amended by Act No. 1592. Until such action was taken by the railroad company, or until the commissioners were appointed and had appraised the land, we know of no legal provision which would prohibit the owner from doing with the land what he pleased. The Act in question gives to the company "the right to enter immediately upon the possession of the land involved." (Sec. 3.) This amendment to Act No. 1258 was enacted especially for the benefit of railroad companies, and affords full protection to them if they act with due diligence. Until some such positive assertion of its desire to expropriate the land, no reason is seen why the company might not ask for a dismissal of the proceedings in accordance with section 127 of the Code of Civil Procedure. The right of the owner to the enjoyment of his property ought not to be made to depend so entirely upon the whims of a third party. No attempt was made to meet the statement of Perez that he had expended a large sum of money on the construction of the building. The commissioners probably saw the structure or some of the materials which entered into it and are in a much better position to judge of the amount expended upon the work than are we. They have fixed that amount at P600. In the absence of positive evidence in the record showing this finding to be grossly excessive, we must accept it as correct.

For the foregoing reasons, the judgment of the court below is modified by reducing the award for the parcel containing 16,094 square meters to the sum of P6,500. The damages for the remaining parcels will be fixed at the same proportionate amount. As thus modified the judgment appealed from is affirmed. No costs will be allowed on this appeal. The amount as herein fixed, together with interest, will be deposited with the clerk of the Court of First Instance of Tayabas, subject to the rights of the defendants and the Tayabas Land Company. So ordered.

Arellano, C. J., Torres, Carson, and Araullo, JJ., concur.

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