

THE CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. ALICE J. NEAL ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 10259. January 26, 1916*

Ponente: TRENT, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-10259/>**TRENT, J.:**

In this case the city of Manila is seeking to expropriate an entire parcel of land for use in connection with a certain public park. The commissioners, after viewing the premises and receiving the evidence, being unable to agree, submitted two reports. The majority report was confirmed by the court and judgment rendered accordingly. The owners appealed.

The land is situated near the corner of Real and Vito Cruz, with a frontage on the latter of 8.49 meters and a depth of 122.08 meters. In the majority report the value of the land was fixed as follows: For the part fronting on Vito Cruz Street and 40 meters deep, P2 per square meter, and for the remaining interior portion of the lot P1 per square meter. The other commissioner, dividing the land into the same two parcels, fixed their value at P2.50 and P1.50 per square meter, respectively. A part of the lot, protruding on the street, is some eighteen inches below the street grade, and the rear portion is still lower. The lot is irregular in shape and has no improvements except three trees.

All the commissioners relied largely upon the testimony of Sellner, who qualified as an expert on land values in that vicinity and who made his estimate, subject to the condition that the property be brought up to the street grade of Vito Cruz. Subject to this condition, Sellner placed the values at P2.50 and P1.50. The majority of the commissioners considered that bringing the property up to street grade would cost considerable money.

There was evidence of transfer of two other parcels located some 300 meters distant from the lot in question, both having frontage on both Vito Cruz and cross streets, at a little over P1 per square meter. It is urged that these lots were too far away from the condemned property to afford a safe comparison of the value. The property is on the outskirts of the city where values are not localized so readily as in densely populated and business districts. The admission of such evidence is largely a matter of discretion (Jones' Commentaries on Evidence, vol. 1, sec. 168), and we cannot say that the comparisons in the present case were so lacking in similarity as to be of no assistance in fixing the value of the condemned property. This, we think, properly applies the rule laid down in the recent case of *Manila Railroad Co. vs. Velasquez* (32 Phil. Rep., 286). Upon the doctrine stated in that case also, as to the weight to be given to the report of the commissioners, we are of the opinion that there is no evidence to justify us in disturbing the award fixed by the majority report. It seems to us that the dissenting commissioner erred in not taking into consideration the fact that the land would require considerable filling to bring it up to the street level, which was the unfulfilled proviso of Sellner's estimate.

A party, who is dissatisfied with the award allowed by the court in its judgment and who appeals to this court, is entitled to have the evidence, taken before the commissioners, reviewed on the appeal, provided he has moved for a new trial, upon the ground that the judgment is not sustained by the weight of the evidence and has noted his

exception to the order of the court overruling such motion. Where, however, as in *City of Manila vs. Battle* (27 Phil. Rep., 34), both parties formally express their satisfaction with the award of the commissioners and thus submit the matter to the court, they are bound by the report in the absence of some cause such as fraud or error which would justify the court in setting it aside.

For the foregoing reasons, the judgment appealed from is affirmed, with costs against the appellants. So ordered.

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

Moreland, J., see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

MORELAND, J.:

So far as appears from the record which this court is authorized to consider in this case there was no exception taken to the report of the commissioners by the appellants or objection to its confirmation made at the hearing on the motion to confirm or at any other time in the lower court, and no exception taken to the order of the court confirming the report; nor was there a motion to open, modify, vacate or set aside the report. Appellant, so far as the record shows, did not even appear at the hearing of the motion to confirm. This being so there is no question presented to this court except of whether the judgment of the court is in accordance with the report. We cannot, under the law, cure this defect by looking at the original record made in the lower court as the Code makes no provision for forwarding it to this court and confers no authority on us to examine it if it were here. We are confined by the statute exclusively to the bill of exceptions as it is certified by the clerk of the court below. (Secs. 143, 248, Code Civ. Proc.) The last paragraph of section 143 (as amended by section 2, Act No. 1123) says in this connection:

"Immediately upon the allowance of a bill of exceptions by the judge, it shall be the duty of the clerk to transmit to the Clerk of the Supreme Court the original bill of exceptions and all documents which by the bill of exceptions are made a part of it. The cause shall be heard in the Supreme Court upon the bill of exceptions so transmitted, all duly certified by the clerk of the court of First Instance."

Thus, the clerk of the Court of First Instance is authorized to certify to the Supreme Court only the bill of exceptions including all documents which, by the bill of exceptions, are made a part of it. He is not empowered, and, therefore, has no authority, to certify or forward the original record of the Court of First Instance. Moreover, even if he were to certify and forward, the Supreme Court would have no authority to examine the original record, the Code providing that "the cause shall be heard in the Supreme Court upon the bill of exceptions." A judgment of this court based on anything but the bill of exceptions would be a judgment outside the record, would be unsupported by the record, and would be illegal; indeed such an act would be a violation of one of the fundamental principles which guide courts in the resolution of cases before them. Appellate courts not having made the records which come before them must depend upon the certification of the person who is designated by law as the one to certify it. Of course, the first requisite is a correct record. No record can be "correct" which is not made in accordance with the law governing the subject. If the law authorizes a particular official to certify a record, no other person can do so; and a record certified by any other person or by nobody would be no record at all; and no appellate court would be authorized to receive or act upon it. Furthermore, if an official is empowered by law to certify to an appellate court a particular document or set of documents as the record of that court on appeal, he is without authority to certify any other; and his certificate as to such other would have no force or effect. Of course, where no official is authorized to certify a given record or document to an appellate court then there is no way by which that record or document can be legally got before the appellate court; and if by some

means it should be physically placed before that court it should be rejected.

Under the Code of Civil Procedure no official is authorized to certify or to send the Supreme Court the original record of the Court of First Instance; and it is not made a part of the record of the appellate court. It is excluded by the express mention of those papers and documents which shall compose the appellate record. It is a necessary conclusion that the original record of the Court of First Instance cannot be considered for any purpose, and specially not to patch up or remake a record which, by reason of appellant's failure, is worthless to him. It being uncertified we have no means of knowing whether it is the record of the trial court or not. The clerk of the Court of First Instance having no authority to certify it he could not be held responsible for a false certification. There would, consequently, be no responsibility anywhere and a fraud might be perpetrated on the appellate court. The law is extremely jealous of the records of the courts; and great care is taken to insure pure records so that justice may be done litigants—something which they would not receive if appellate courts accepted uncertified records, or records certified by unauthorized persons, or records which, under positive provisions of law, are incompetent in the appellate court. It is, then, unquestionable that we must, in the case before us, consider simply and solely the bill of exceptions and the documents by it made a part thereof. That being so it is evident at a glance that there has been no foundation laid for attacking the report of the commissioners or the judgment of the court.

No objection having been made to the report of the commissioners and no opposition offered to the confirmation thereof by the court, and no exception having been taken to the order of confirmation, and no motion made to modify, vacate or set aside, what question is presented for our consideration on this appeal? Section 143 of the Code of Civil Procedure says, in part, and this is the only law on the subject of bills of exceptions, that is, appeals in ordinary actions:

"Upon the rendition of final judgment disposing of the action, either party shall have the right to perfect a bill of exceptions for a review by the Supreme Court of all rulings, orders, and judgments made in the action, to which the party has duly excepted at the time of making such ruling, order, or judgment."

Manifestly, if there is no exception, there is no question presented. A bill of exceptions is correctly named. If there is no exception there can be no review of it; and exceptions are the only things that can be reviewed. The mere appeal from the judgment entered on the order of confirmation raises no question except that of whether the judgment is in accordance with the report. It raises no question as to the correctness of the report either as to the law or the fact. This is the proposition which does not appear to have been taken into consideration in the decision and especially in that part where it says: "A party who is dissatisfied with the award allowed by the court in its judgment and who appeals to this court, is entitled to have the evidence taken before the commissioners reviewed on the appeal, provided he has moved for a new trial, upon the ground that the judgment is not sustained by the weight of evidence and has noted his exception to the order of the court overruling such motion."

The court appears to have misconceived in this quotation the true nature of condemnation proceedings. That which it is seeking to do and what it actually does by this decision is to attack the report of the commissioners and show that it is wrong. How does it do this? Not by or through any exception or objection thereto; not by any opposition to its confirmation; not by any exception to the order confirming it; not by motion to modify, vacate or set aside; not by any means provided by law, such as an exception, objection, motion, or other opposition to the report (Sees. 143, 246, 248, Code Civ. Proc.) It attacks it by an appeal from a judgment; that is, by an exception or objection, not to the report of the commissioners, but to the judgment of the court. In other words, the decision is seeking to destroy one act by an objection or exception taken to another and different act. More, it is destroying the act of one body by an exception taken to an act of a different body. The rule is, and the law as laid down in the code is, that, if one desires to attack a given report, finding, order, or judgment, he must attack it, not something else. One cannot attack the report of commissioners by attacking the judgment of the court based thereon. If there

is vice in the report, the report itself must be assailed. If the report itself is not attacked in any way, and is not invalid and does not show palpable prejudice, corruption, or gross abuse on its face, the court must approve it and must enter judgment in accordance therewith. (*City of Manila vs. Battle*, 27 Phil. Rep., 34.) The court is not to blame, and its judgment is not open to attack, because a party has folded his hands and let the report be approved and an order of confirmation entered thereon without protest, objection, motion, or exception. The court, in such case, has not erred. It is the party; and he cannot cure his error by taking advantage of the makeshift of assailing the judgment after the time is past when he can assail the report. One cannot destroy a bad report by attacking a good judgment; nor can he quarrel with a report over the shoulders of a judgment.

But, it seems to me, there are other errors in the quotation from the decision above set out which, I think, are material here. It says that "one who is dissatisfied with the award allowed by the court in its judgment" * * *. The court makes no "award" in its judgment or elsewhere. The award is made by the commissioners in their report. What the court does is to accept or approve the report "Upon the filing of such report in court, the court shall, upon hearing, accept the same and render judgment in accordance therewith * * * and the judgment shall require payment of the sum awarded, * * *." (Sec. 246, Code Civ. Proc.) The court makes no award. It renders judgment in accordance with the award of the commissioners, and orders payment of the sum so awarded. As a necessary result, no one can be "dissatisfied with the award allowed by the court."

The remark just made brings out what is, in my judgment, another misconception in that part of the decision already quoted where it speaks of the dissatisfaction of a party with the award and "who appeals to this court." An appeal from a judgment of the court is not an appeal from an award. Strictly speaking an "award" is not appealable. It cannot even be brought up by itself. A party may get the award before the court on appeal; but he must do so by appearing at the "hearing" mentioned and provided for in section 246 and make his objections, offer his opposition in some form to the confirmation of the report; and, if he is overruled and the report confirmed, he must take his exception to the order of confirmation and then prosecute his bill of exceptions, which must include his objections to the report and his exception to the order confirming it and to the judgment entered thereon, as no report, finding, order, or judgment can be reviewed unless excepted to. (Sec. 143, Code Civ. Proc, above quoted.) Such procedure brings up the report as a whole, and with it the award, for such review as the court is authorized by law to make.

Another error, it seems to me, is embedded in that part of the decision quoted which says that, on appeal mentioned therein, the applicant "is entitled to have the evidence taken before the commissioners, reviewed on the appeal, provided he has moved for a new trial, upon the ground that the judgment is not sustained by the weight of evidence * * *." How can a motion be made to a court for a new trial, in the sense in which that term is used in section 497 of the Code of Civil Procedure, when there has never been a previous trial before that court at which any evidence was offered or taken? In condemnation proceedings there is no trial in the court in the sense used. There are hearings before the commissioners; but there is no trial before the court in the sense of taking evidence except when the right to condemn is denied and the issue raised thereby is tried out. On the other questions there is no trial by the court in the sense in which it is used in the question. The powers of the court are not those of a trial court in the strict sense, but are limited to a consideration of the report of the commissioners. (Sec. 246, *supra*.) We have held that the court cannot grant a new trial in the sense of vacating, on proper proceedings, the judgment entered on the report of the commissioners and ordering a rehearing of the motion to confirm; and when the proper objections have been made and exceptions taken, the court may make, on such rehearing, any of the orders specified in section 246 above. (*De Fiesta vs. Llorente and Manila Railroad Co.*, 25 Phil. Rep., 554.) But by the use of the words "new trial," which are the words used by the parties all through the case cited, it was not meant a new trial in the sense in which it is used in section 497 paragraph 2 of the Code of Civil Procedure. There being, as a rule, no evidence before the court in cases of eminent domain, no motion for a new trial under section

497 can be properly made. The new trial, so called, which the court may grant is an opportunity to present objections to the report of the commissioners and, if successful, to obtain a modification of it or vacation of the report and a new trial, or, more properly, a rehearing before the commissioners. There certainly can be no such motion as is contemplated by section 497. The court has no evidence before it, has heard no testimony, has seen no witnesses, has weighed no evidence. The grounds on which it acts in a motion for a rehearing in condemnation are different from those in a motion for new trial in an ordinary action; and the two motions have different purposes. In the former the moving party desires either to make the judgment conform to the report, or to vacate the order of confirmation and have an opportunity to attack the report, or, perhaps, by setting aside the report, obtain a rehearing before the commissioners. In the latter he desires to obtain a review of the evidence either by the trial or appellate court or both. Moreover, the evidence taken by the commissioners is not reviewed on appeal to this court by virtue of a motion for a new trial under section 497; but by virtue of the fact that the report has been objected to, its confirmation duly opposed, an exception taken to the order of confirmation and to the judgment entered thereon, and a bill of exceptions containing all these exceptions has been prosecuted to the Supreme Court. The report is thus brought before the appellate court for review. A motion for a new trial under section 497 has no significance and adds nothing to the powers of the appellate court. The review of the report is obtained solely and exclusively by the objection or opposition and exceptions above referred to. A motion for a new trial in condemnation proceedings on the ground that the judgment was against the weight of the evidence would be a strange proceeding. Besides, the judgment of the court is not based on the evidence but on the report. (Sec. 246, above.) If the judgment is based on the report and not on the evidence what can be the value of a motion put on the ground that the judgment is against the weight of the evidence?

These misconceptions pointed out, the error of the court is clear in proceeding to a review of the whole case including the report of the commissioners and the evidence taken by them. The only way to bring the report up for review being by the objections and exceptions already noted, and none of them having been made or taken, there can be no review by this court. (Sec. 143, supra.)

The case of *City of Manila vs. Battle*, above, is decisive of the case at bar; and a refusal to follow the principles governing that case is in effect, in my judgment, a reversal of it. In that case we said:

"We are of the opinion that the court erred and that its judgment must be reversed to the extent to which it changed the report of the commission relative to the award made to those appellants. Section 246 of the Code of Civil Procedure provides:

" '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; * * *.' "

"From this section it is clear that, on the presentation to the court of the report of the commissioners, the court shall accept the same and render judgment in accordance therewith. That is the first duty thrust upon the court when the report is presented. Under certain conditions, however, the court may do other things. It may recommit the report to the committee; it may set it aside and appoint new commissioners; it may accept the report in part and reject it in part and make such final order as may be just and proper. But it can do these things only upon a condition named in the section and that is that cause be shown.

"The showing of cause is a condition precedent for doing anything except to confirm the report. This means that cause must be shown by the parties interested. The court itself has no interest in the matter except, perhaps, in

cases where it clearly appears that a fraud has been committed upon the court or upon the public by the report or that the findings of the commission are such as to show fraud, corruption, or bad faith. Its duty, in the absence of cause shown, is to confirm the report. This is so even though there is objection made to it. How much more is it its duty when the parties themselves affirmatively agree upon the justice, equity, and legality of the report and jointly ask for its confirmation!"

In the case at bar the parties made no objection to the report—not only showed no cause (sec. 246, above) but did not except or object to it, or offer any motion with respect to it, or even appear at the hearing to confirm in response to the notice thereof which they received. According to the *Battle* case the plain legal duty of the court was, under such circumstances, to confirm. That being the case the order of confirmation was not erroneous, as the court was compelled by law to enter it; and of necessity, the judgment entered on the report and on the order confirming it was not erroneous. (Sec. 246, above.) On what possible theory can we reverse, vacate, or modify a judgment which is not erroneous? On what grounds can we set aside an order of confirmation to which no objection was ever made and to which no exception was ever taken? On what principle can we set aside a report of commissioners when no objection was ever made to it; when no one ever opposed it; when no one ever objected to its confirmation, or even appeared at the hearing of the motion to confirm the report?

The doctrine of the *Battle* case is that of other cases. In *Secombe vs. Milwaukee and St. P. Ry. Co.* (90 U. S., 108), the court said, touching the review of the report of commissioners under circumstances very similar to those disclosed in the case at bar:

"It is urged, also, against the validity of the award of the commissioners that it was not made in reasonable time, or the amount of it ever paid or tendered to the parties in interest. Whether this be so or not does not concern the plaintiff. It is enough for him to know that a judgment was entered confirming the award, and the money paid into the court for the use of Pinney and Osborne, and is there now unless they have seen fit to withdraw it. It is a fair presumption, as both these persons had notice, actual or constructive, of the proceedings in condemnation, and took no steps to review them, that they were either satisfied with the award or concluded they could not make successful opposition to it."

The case of *Detroit Western Transit & Junction R. R. Co. vs. Crane* (50 Mich., 182) is to the same affect. In that case Judge Cooley, for the full court, said:

"These are the reasons assigned why confirmation of the report should not be had, and they are the only reasons which appear to have been suggested in that court. They are therefore the only reasons to be considered now and here."

The head note says:

"In reviewing proceedings for the condemnation of lands, the Supreme Court cannot consider any reasons against the confirmation of the report of the jury except those which were presented to the lower court."

The same principle governs the decision of the same question in *Muire vs. Falconer* (10 Gratt., 12), where the court said:

"The two first errors assigned in the petition are for alleged imperfections in the report of the viewers. No motion to set aside the report for this cause seems to have been made in the county court. At the final hearing of the cause in the county court, the appellant moved to quash the petition, for errors on its face, and also moved to quash the inquisition; but does not appear to have objected to the report of the viewers. Such objection, according to the case of *Lewis vs. Washington* (5 Gratt., 265), should have been made in the county court, by a motion to set aside the report."

The court in *Knauff vs. St. Paul, Stillwater & Taylor's Falls R. R. Co.* (22 Minn., 173), said:

"From this statement of facts, gathered from the paper book, it is difficult to see how the precise point here presented was ever called to the attention of the court below, or adjudicated by it, and the counsel for appellant admits as much in his printed argument, for he states 'that the attention of neither witnesses nor jury seems to have been directed to the question of damages, but simply to that of value alone.' Under these circumstances it is too late to raise the question here."

See also *Kankakee & Illinois River R. R. Co. vs. Chester* (62 111., 235).

For these reasons I cannot agree to a review of the evidence taken before the commissioners. I am in favor of an affirmance without a review.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.