

## THE MANILA RAILROAD COMPANY AND THE BOARD OF PUBLIC UTILITY COMMISSIONERS, PETITIONERS, VS. THE HONORABLE ISIDRO PAREDES, JUDGE OF THE FOURTEENTH JUDICIAL DISTRICT, THE TAYABAS ...

*G.R. No. 10713. March 31, 1915*

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### PER CURIAM:

With the expectation of writing later a more extended opinion sustaining the judgment about to be pronounced, the court for the present declares that it finds the demurrer to the complaint to be unfounded and the motion to dissolve the injunction without basis.

The basis of this decision is that the court had no authority to increase the amount of the deposit required of the railroad company and its attempt to do so was in excess of its jurisdiction.

The demurrer is overruled and the defendants are given ten days within which to answer. On failure to answer, the plaintiffs will be entitled to the relief demanded in the complaint.

The motion to dissolve the preliminary injunction is over-ruled. So ordered.

Arellano, C. J., Johnson, Carson, Moreland, and Trent, JJ.

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**DECEMBER 17, 1915.**

### CARSON, J.:

These are original proceedings in this court, wherein the applicants, The Manila Railroad Company and the Board of Public Utility Commissioners, pray for the issuance of a writ of certiorari to the Honorable Isidro Paredes, judge of the Fourteenth Judicial District, requiring him to certify to this court the record of certain condemnation proceedings pending before him. The applicants allege that in the course of those proceedings the respondent judge issued an order directing the Railroad Company to increase the amount of a certain deposit, theretofore made by the company to secure final payment of the value of certain lands which it sought to have condemned for its use, from P8,971.72 to P1,000,000. They further allege that the order in question is illegal, null and void because, as they insist, the respondent judge who issued it was wholly without jurisdiction so to do; and also because, as they contend, even if it were admitted that the respondent judge had jurisdiction to issue an order increasing the amount of the deposit there tofore made in those proceedings, the issuance of an order directing its increase from P8,971.72 to P1,000,000 was, under all the circumstances of the case, a manifest abuse of judicial discretion. Applicants pray that on a review of the whole record this court declare the order in question null, void and without effect.

Various parties claiming to be owners of the greater part or all of the land involved in the condemnation

proceedings in the court below, and at whose instance the order in question was issued, are joined as respondents with the respondent judge in accordance with the statutory requirements in cases of this kind. All the respondents are represented by the same counsel, and the only responses to the order of this court to show cause why the writ should not be issued are those filed by the respondent judge, the Tayabas Land Company, and the Tayabas Land Co. & Lim, (hereinafter referred to as the land companies) all the other respondents contenting themselves by appearing by counsel and formally adhering to the contentions made by the land companies, and making them their own.

In response to an order of this court to show cause why the writ should not issue, the respondents demurred to the complaint; and thereafter, the demurrer having been over-ruled, the land companies filed an extended answer, in which they undertook to show that in issuing the order in question the respondent judge was acting within the jurisdiction conferred upon him by law, and that there was no abuse of his discretion in its issuance. In support of their contentions, these respondents set forth in their answer what purports to be a full and complete history of all the proceedings had in the court below, supported by extensive extracts from the record of those proceedings. The respondent judge also filed an answer in which he sets forth the grounds upon which he insists that he acted within his jurisdiction in the issuance of the order, and in support of his contention sets forth a statement of facts, which, so far as it goes, is substantially identical with the statement of facts relied upon by the land companies.

A pleading, purporting on its face to be a demurrer to the answer of the respondents having been filed by counsel for the plaintiff, the case was set for argument upon the pleadings as they then stood. At the hearing, it was agreed in open court that the pleading purporting to be a demurrer to the answers should be treated as a prayer for judgment on the pleadings, and after extended oral argument the case was finally submitted for judgment.

Without stopping to consider or comment upon any contention which might be made as to the form of the pleadings, we are of opinion that the facts disclosed by the pleadings permit us to go directly to the merits of the cause, since we are satisfied that, accepting as true all the facts well pleaded in the respective answers of the respondents, these facts, taken together with the uncontroverted facts set forth in the complaint, fully sustain the contention of the applicants that the order complained of was issued by the respondent judge without jurisdiction in the premises, and that it is therefore null, void and of no effect.

Sometime prior to the first of April, 1913, the Railroad Company entered upon and took possession of a long, narrow strip of land, running between the municipalities of Pagbilao and Lopez in the Province of Tayabas, for use as a roadbed for a railroad which it was engaged in building under its charter. The Railroad Company claims that it took possession of this strip of land with the consent of the various owners and occupants claiming title thereto, and with the understanding that it would pay the owners of all the lands thus taken a price to be agreed upon thereafter, or to be fixed in condemnation proceedings; and that, not having been able to agree upon a price with the owners of the land, it was later compelled to institute proceedings for the condemnation of the land thus taken.

However this may be, the Railway Company, on the first day of April, 1913, instituted expropriation proceedings looking to the condemnation of all these lands under and by virtue of the authority conferred upon it by its charter and under the laws applicable to such proceedings. On the fourth day of April, 1913, the Honorable Herbert Gale, the judge then presiding in the court wherein these proceedings were pending, entered an order granting to the Railroad Company the right of possession of all these lands, upon the filing of a deposit in an amount certified by the provincial treasurer to be equal to the average assessed value of all these lands, which, in the language of the order itself was the value of the lands, "hereby provisionally ascertained and fixed." On the eleventh of April, 1913, the Railroad Company deposited the sum of P8,971.72, the assessed value of the lands in question as shown by the certificate of the provincial treasurer. On the — of April, 1913, Judge Cui, then presiding in the court

wherein the proceedings were pending, issued a formal writ, directing the sheriff of the court to put the Railroad Company in possession of all the lands described in the applications in expropriation proceedings filed by the Railroad Company.

Thereafter, the land companies claiming to be the owners and successors in interest of the original owners of most of the lands in question, entered their appearance as defendants in the expropriation proceedings, and acting jointly with the various claimants whose lands had not been acquired by them, procured the appointment of commissioners for the valuation of these lands. On the ninth of January, 1915, the land companies and the other claimants to these lands moved the court to increase the amount of the deposit from P8,971.72, the amount originally fixed, to P1,000,000. On the 18th of February, 1915, the respondent judge, then presiding in the court wherein the proceedings were pending, after hearing the parties and considering the evidence submitted at the hearing, and notwithstanding objection duly interposed on the ground of his lack of jurisdiction to entertain the motion, issued an order directing the Railroad Company to increase its deposit to P1,000,000.

It is this order which the applicants now seek to have this court declare null and void in original certiorari proceedings in this court.

On behalf of the applicants for the writ, it is contended that not only was the respondent judge wholly without jurisdiction to issue this order, but that even if it were admitted that he had such jurisdiction, the amount fixed by him is so far in excess of the true value of the land, that this court should declare that in fixing this amount, he manifestly abused his judicial discretion in the premises. On behalf of the respondents, it is contended that, in issuing the order in question the trial judge in no wise exceeded the jurisdiction conferred upon him by statute; and further that the amount originally fixed for the deposit was utterly inadequate, and was so far short of the true value of the lands in question, as to justify this court and the court below in holding that there had been an abuse of discretion in its issuance; and that the value of the land as fixed by the respondent judge is well within the true value as disclosed by the evidence submitted to him in the court below.

The admitted facts as disclosed by the pleadings are wholly insufficient to sustain a finding on the various contentions of the parties as to the true value of the land; and if it were necessary for us to make findings in this regard and to rule upon applicants' contentions as to the alleged abuse of discretion in the court below in fixing the amount of the deposit to be filed by the Railroad Company, it would be incumbent on us to give the parties an opportunity to submit evidence in support of their respective contentions. Holding as we do, however, that the respondent judge was wholly without jurisdiction to enter the order complained of, or any order whatever directing an increase in the amount of the deposit which had been made in conformity with a lawful order theretofore entered in the proceedings, it is not necessary for us to consider any disputed question of fact—the admitted facts as disclosed by the proceedings being sufficient to sustain the prayer of the applicants for the issuance of the writ on the ground of a total lack of jurisdiction in the respondent judge.

It is said that the jurisdiction of the respondent judge to issue the order complained of is recognized in the following paragraph of section 1 of Act No. 1592.

"When condemnation proceedings are brought by any railway corporation, in any court of competent jurisdiction in the Philippine Islands, for the purpose of the expropriation of land for the proper corporate use of such railway corporation, said corporation shall have the right to enter immediately upon the possession of the land involved, after and upon the deposit by it with the Treasurer of the Philippine Islands of the value of the land, in money, as provisionally and promptly ascertained and fixed by the court having jurisdiction of the proceedings, said sum to be held by the Treasurer subject to the orders and final disposition of the court: Provided, however, That the court may authorize the deposit with the Insular Treasurer of a certificate of deposit of any depository of the Government of the Philippine Islands in lieu of cash, such certificate to be

payable to the Insular Treasurer on demand in the amount directed by the court to be deposited. The certificate and the moneys represented thereby shall be subject to the orders and final disposition of the court. And in case suit has already been commenced on any land and the money deposited with the Insular Treasurer at the date of the passage of this Act, the said money may, upon proper order of the court, be withdrawn from the Treasury by the railway corporation which deposited the same, and a certificate of deposit, as above described, may be deposited in lieu thereof. And the court is empowered and directed by appropriate order and writ if necessary, to place the railway corporation in possession of the land, upon the making of the deposit."

We are of opinion, however, that while this section of the Act clearly empowers the court wherein expropriation proceedings are pending to fix the amount of the required deposit and to give possession of the land upon the making of the deposit; it as clearly denies, by necessary implication, the power of the court to change or modify the amount thus or to disturb the possession of the railway, after the deposit thus fixed has actually been made by the railway corporation.

The statute expressly provides that the corporation "shall have the right to enter immediately upon the possession of the land involved" upon the making of the prescribed deposit. The statutory right of possession thus secured to the railway corporation is an unqualified right of possession during the pendency of the expropriation proceedings; but if it were within the power of the court to change or modify the amount of the deposit as it sees fit, at any time throughout the proceedings, the statutory right of possession thus guaranteed and expressly conferred upon the railroad company might well become illusory. If the issuance of an order directing the increase of the amount of the deposit does not affect the railroad company's right of possession, the entry of such an order would be a vain and meaningless thing. If it does affect the right of possession of the railway corporation, then it is in direct conflict with the express terms of the statute securing a statutory right to enter upon, and maintain possession during the pendency of the proceedings.

It will be observed, furthermore, that the statute expressly empowers and directs the court, "upon the making of the deposit," to place the railway corporation in possession of the land; and that there is nothing in the statute which either expressly or by implication reserves to the court the power to undo its act, or to deprive the Railroad Company of possession, in the event that, pending the proceedings, the judge should become convinced that the amount of the deposit is insufficient.

Respondents insist that the power of the court to change or modify the amount of the deposit is expressly recognized in the clause of the above-cited statute which provides that after the deposit has been made "the certificate and the moneys represented thereby shall be subject to the order and final disposition of the court." We are of opinion, however, that this clause of the statute merely provides for the placing of the control and final disposition of the moneys actually deposited in the hands of the court, after they have been deposited. It has no relation whatever to the exercise of jurisdiction to fix the amount of the deposit which is conferred upon the court elsewhere in the statute.

It is also contended that the power of the court to modify and amend the order in question is expressly recognized in paragraph 7 of section 11 of the Code of Civil Procedure (Act No. 190). That section provides:

"Every court shall have power:

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"7. To amend and control its process and orders so as to make them conformable to law and justice."

This provision of the code was borrowed from section 128 of the California Code, and in *Kaufman vs. Shain* (111 Cal., 16), the supreme court of the State of California in commenting upon its terms and limitations held as follows:

"Every court of record has the inherent right to cause its acts and proceedings to be correctly set forth in its records; and whenever it is properly brought to the knowledge of the court that a record made by the clerk does not correctly show the order or direction which was in fact made by the court at the time it was given, the court has authority to correct its record in accordance with the facts, but it cannot, under the form of an amendment of its record, correct a judicial error, or make of record an order or judgment that was never in fact given,"

But it is urged that aside from any express grant of power by statute, every court has inherent power over the proceedings pending before it, by virtue of which it may amend its judgments and orders so long as they are still pending before it, when it has become convinced that such judgments are erroneous either in matter of law or of fact. It is said that such power, in relation more especially to interlocutory orders, is universally exercised and recognized in everyday practice in every court in the Philippines. The question of the power of the courts in this jurisdiction to change or modify judgments in matters of substance, and to correct errors of law or of fact into which they may have fallen in rendering the original judgment, is discussed at length in relation more especially to final judgments in the case of *Arnedo vs. Llorente and Liongson* (18 Phil. Rep., 257).

In that case we held that Courts of First Instance in this jurisdiction have plenary power over judgments, orders and decrees entered by them in proceedings pending before them, until such judgments, orders and decrees have become final in the sense that the party in whose favor they are rendered is entitled, as of right, to have execution thereon; but that thereafter they lose control of such judgments, orders and decrees, and have no inherent power to annul or to change or to modify them in matters of substance, either of law or of fact. Relying upon the doctrine thus announced, we held specifically in that case that where the statute, by virtue of which a Court of First Instance is clothed with power to render a particular judgment, discloses, either in express terms or by necessary implication, the legislative intent that the judgment should be executed forthwith upon its entry, the court loses its control over such judgment immediately upon its entry, and has no power to annul, change or modify it hereafter.

From what we said in that case, we think there can be no doubt that, speaking generally, Courts of First Instance have plenary control over all interlocutory judgments, orders or decrees entered by them pending the final determination of the proceedings; and indeed, it is true, as was said by counsel for respondents in oral argument, that it is everyday practice for these courts to annul, change or modify such interlocutory judgments, at any time prior to the final determination of the proceedings in which they are issued. But in accordance with the reasoning on which the former opinion is based, it cannot be doubted that where the statute by virtue of which a particular judgment, order or decree is entered in the course of proceedings pending in a Court of First Instance, expressly or by necessary implication prescribes that one of the parties shall have the right to have the judgment, order or decree executed upon compliance with certain prescribed conditions, the Court of First Instance loses plenary control over such judgment, order or decree from and after the time when such prescribed conditions have been duly complied with.

Act No. 1592 expressly provides that railway corporations shall have the right to enter upon possession of the lands involved in condemnation proceedings had under the Act immediately upon the filing of a deposit fixed by order of the court; and, further, that, if necessary, they shall have the right to a writ of possession pending the proceedings. In other words, the statute provides that they may have execution as of right upon the order for possession, immediately upon the making of the prescribed deposit. It follows, under the reasoning of the case above referred to, that immediately upon the making of a deposit fixed by order of the court, the court loses plenary control over the order fixing the amount of the deposit, and has no power to annul, amend or modify it in matters of substance pending the course of the condemnation proceedings.

A contrary ruling would tend directly to defeat the manifest intention of the legislator to provide a speedy and summary procedure whereby the peaceable possession of lands necessary for the construction of railroads may be

secured without the delays incident to prolonged and vexatious litigation touching the ownership and value of such lands, which should not be permitted to delay the progress of the work.

It is contended, however, in behalf of the respondents, that even if it be admitted that Courts of First Instance have no power to alter or amend orders fixing the amount of the deposit to be filed by railway corporations under the provisions of Act No. 1592, nevertheless, in the case now under consideration, the order entered by the respondent judge, although in form an order amending the original order fixing the amount of the deposit, should be held to be in truth and in fact an original order entered under authority of the Act—this because, as it is said, the original order "was invalid, void and of no legal effect.

It is urged that the original order should be held to be invalid because (1) it was issued without giving the owners of the land involved in the proceedings an opportunity to be heard, and because, (2) it fixed the deposit in an amount so palpably and grossly inadequate, as to justify a holding that there was a manifest abuse of discretion on the part of the judge who entered it.

As to the contention of respondents based on the failure of the judge who entered the order to give the claimants to the land an opportunity to be heard, it should be sufficient to point to the provisions of the Act (No. 1592) itself. The statute directs that, at the very outset, "when condemnation proceedings are brought by any railway corporation" the amount of the deposit is to be "provisionally and promptly ascertained and fixed by the court." It is Very clear that it was not the intention of the legislator that before the order fixing the amount of the deposit could lawfully be entered the court should finally and definitely determine who are the true owners of the land; and after doing so, give them a hearing as to its value, and assess the true value of the land accordingly. In effect, that would amount to a denial of the right of possession of the lands involved until the conclusion of the proceedings, when there would be no need for the filing of the deposit. Of course, there is nothing in the statute which denies the right of the judge to hear all persons claiming an interest in the land, and courts should ordinarily give all such persons an opportunity to be heard if that be practicable, and will cause no delay in the prompt and provisional ascertainment of the value of the land. But the scope and extent of the inquiry is left wholly in the discretion of the court, and a failure to hear the owners and claimants of the land, who may or may not be known at the time of the entry of the order, in no wise affects the validity of the order. From such sources of information as may be available at the time "when condemnation proceedings are brought," it is the duty of the judge of the court wherein the proceedings are brought, promptly and provisionally to ascertain the value of the land involved therein; and when he has satisfied himself in this regard, it is his duty to enter the order for the prescribed deposit, even though he may be well aware that upon full inquiry his estimate may prove to be less than or in excess of the true value of the land, and even though the claimants and owners have not been heard.

It appears from the pleadings that the different strips of land involved in the proceedings now under consideration were made up of small parcels which, prior to the entry of the Railroad Company, belonged to scores and perhaps hundreds of different owners, and it would seem that any attempt by the court at the outset of the proceedings to bring in all the possible claimants, would have been attended with intolerable delay; and be this as it may, it was clearly within the sound discretion of the trial judge to determine provisionally the value of the land, for the purpose of fixing the amount of the deposit, without delaying the proceedings in order to give all or any of these claimants an opportunity to be heard.

In thus ruling, we are not unmindful of the perfect and unquestioned right of every owner of lands to be heard in any judicial proceeding wherein his rights of ownership are adjudicated. The right to be heard is inherent in the very nature of such proceedings. But the right of the Railroad Company to acquire possession and ownership of the lands in question in condemnation proceedings, conditioned only upon the compensation of the owners, has never been challenged; and the provisional and prompt ascertainment of the value of the lands under the terms of

Act No. 1592 upon which the order for possession was based was not a proceeding for the ascertainment of title to the land or of its true value for the purpose of determining the amount of compensation to which the owners would be entitled upon the condemnation of their lands. The sole purpose and object of that proceeding was to ascertain the amount of the deposit which the state required the railway corporation to make in a case wherein it invoked the right of eminent domain, and desired to enter into possession of the land before the title thereto and the amount of compensation to be paid the owners of the land had been judicially determined.

The question then is not whether the state has power to authorize the taking of lands in condemnation proceedings and to adjudicate the rights of claimants of ownership to just compensation therefor, without giving the parties an opportunity to be heard. The right of the claimants to appear and to be heard on their claims for compensation is not and cannot be questioned under the statute. The real question is whether the state may prescribe a procedure by virtue of which a railway corporation may secure possession of the lands it seeks to condemn, pending the condemnation proceedings, without first paying the owners just compensation therefor, on condition that it deposit with the Treasurer of the Philippine Islands the value of the land, in money, provisionally ascertained by the court without giving the owners of the land an opportunity to be heard as to the amount of the prescribed deposit.

The validity and constitutionality of legislative enactments authorizing taking immediate possession of lands involved in condemnation proceedings, without first making compensation therefor, has frequently been challenged. But "According to the weight of authority if the constitution or statutes do not expressly require it, actual payment or tender before taking is unnecessary, and it will be sufficient if a certain and adequate remedy is provided by which the owner can obtain compensation without any unreasonable delay. According to this view the usual constitutional provision that private property shall not be taken for a public use without just compensation does not require that compensation shall be actually paid in advance of the occupancy of the land taken, and does not prohibit the legislature from authorizing a taking in advance of payment." (15 Cyc, 778 and cases there cited.) Lewis in his work on Eminent Domain, section 678, citing a long list of cases in support of the text, says that:

"As an original question, it seems clear that the proper interpretation of the constitution requires that the owner should receive his just compensation before entry upon his property. When an individual is ousted from possession under a claim, of right, his property is taken from him, and, if he has not been paid an equivalent in money it is taken from him without compensation. Some of the cases so hold. But in most States it is held that the making of compensation need not precede an entry upon the property, provided some definite provision is made whereby the owner will certainly obtain compensation.

"Some courts have gone so far as to hold that the property may be occupied before compensation is made, provided the statute under which it is taken provides a mode for ascertaining the compensation, and requires its payment by the party taking, although the taking may be by an individual or private corporation."

In this jurisdiction the constitutional prohibition against the taking of property without just compensation contains no express provision requiring prepayment; and following the weight of authority, we are of opinion that there is no prohibition against the legislative enactment of a form of procedure whereby immediate possession of lands involved in expropriation proceedings may be taken, provided always that due provision is made to secure the prompt adjudication and payment of just compensation to the owners. We believe that such provision is made for the adjudication and payment of just compensation to the owners of the lands affected by the condemnation proceedings authorized under Act No. 1592; and we conclude that these legislative provisions cannot be successfully attacked on the ground that they contravene the prohibitions against the taking of property without due process of law or without just compensation.

It may be, and doubtless is true that the prescribed procedure, like all man-made institutions, partakes of the imperfections and human weaknesses of its creator, so that it cannot be said to furnish an infallible mode whereby just compensation will be secured to the owners of lands taken in expropriation proceedings. But having in mind that the Value of the land, in money, as provisionally ascertained by an impartial judge, must be deposited in the Insular Treasury before the order for possession can be put into effect; and that the right of the owners to recover just compensation is not limited or restricted to the amount of the deposit should it prove insufficient in a particular case; and further that the order for possession cannot issue until the condemnation proceedings are actually instituted; we are satisfied that it sufficiently and satisfactorily secures the end in view, that is to say, "the prompt adjudication and payment of just compensation without unreasonable delay."

In the very nature of things, the whole procedure looking to the authorization of the taking possession of the lands in advance of payment might, and in many cases would degenerate into a meaningless farce, if a lawful order granting immediate possession could not issue without first giving the owners an opportunity to be heard as to the value of their lands and the amount of the deposit which should be required of the railway corporation before taking possession. In contested cases this would involve the adjudication in the first place of the title to the lands involved; and after title has been adjudicated the right of the true owner to be heard would necessarily involve the right to call witnesses in support of his claim as to the value of the land and the amount of the deposit. As we have already indicated, all this would defeat the very purpose which the whole procedure is intended to secure; and would substantially amount to the postponement of the right of entry on the lands until a stage of the proceedings has been reached at which final judgment might well be entered definitely disposing of the case.

Having concluded that the constitutional prohibitions do not deny to the legislature the right to authorize the taking of land in expropriation proceedings without prepayment of just compensation, if due provision is made for the adjudication and payment of just compensation without unreasonable delay; and having arrived at the further conclusion that the deposit of the value of the lands involved, in money, as promptly and provisionally ascertained by an impartial judge, in the course of expropriation proceedings already instituted, sufficiently and satisfactorily secures the end in view, even though the owners of the land are not given an opportunity to be heard as to the amount of the deposit; we conclude that these statutory provisions do not deny any right of the owners of such lands guaranteed in the Constitution or the Philippine Bill of Rights; and that such owners of lands are not entitled to demand the right to be heard, as an indispensable requisite to the validity of the "prompt and provisional" determination of the amount of deposits made under authority of the provisions of section 1 of Act No. 1592.

We come now to consider the contentions of counsel based upon their allegations that the value of the land as provisionally determined in the original order fixing the amount of the deposit was so grossly inadequate, that the respondent judge, treating it as an order entered with manifest abuse of the discretion conferred upon the judge who made it, was justified and empowered either to declare it null, void and without effect, or wholly to disregard it, and himself enter an original order fixing the amount of the deposit which should be required of the Railroad Company.

As we have already indicated, if the disposition of this contention required a ruling on our part as to the true value of the land, we would be compelled to hear testimony in that regard, that fact not being developed or admitted in the pleadings. But we think that the contentions of counsel can be disposed of without entering upon an inquiry of this hotly disputed question of fact.

In the first place it appears that the judge who issued the original order fixed the Value of the lands in question at the amount of their assessed valuation, as shown by the sworn certificate of the provincial treasurer; and although it might thereafter be made to appear that the amount so determined would not furnish just compensation of the lands taken, or that it was grossly inadequate, it is by no means certain that proof of the mere inadequacy of the

amount of the value of the lands thus provisionally ascertained would be sufficient in itself to establish an allegation of abuse of discretion on the part of the judge, who adopted the assessed valuation as a standard for the provisional determination of the amount of the deposit to be made under Act No. 1592.

Under such circumstances it may well be doubted that any court, even in certiorari proceedings, would be authorized to annul or set aside the order fixing the amount of the deposit.

It has been said that:

"The principle is uncontroverted that certiorari does not lie to review matters and proceedings of inferior tribunals, boards, officers, etc., in the proper exercise of discretion confided to them; and that, in order to obtain this review, it must be clearly shown that there has been an unwarrantable and illegal exercise of such discretion, to the substantial injury of the party complaining." (Enc. PI. and Pr., vol. 4, p. 81.)

In support of the doctrine a number of cases are cited including *Clifford vs. Overseer of Poor of Frankford* (37 N. J. L., 152), wherein it was held as follows:

"Before this court can interfere on certiorari with a matter confided to the discretion of the court below, it must be clearly shown that there has been an unwarrantable and illegal exercise of such discretion to the substantial injury of the party complaining."

Also the case of *Avery vs. Ruffin* (4 Ohio, 420), wherein the court said in an opinion rendered, in certiorari proceedings pending before it:

"When the court of common pleas makes an order under the statute to distribute fees between the late and present sheriff, the Supreme Court will not interfere unless a strong case of abuse is presented."

And the same doctrine is announced in *Rose vs. Stuyvesant* (8 Johns. [N. Y.], 426); *Beekman vs. Wright* (11 Johns. [N. Y.], 442) ; *People vs. Martin* (33 N. Y. Supp., 1000), and *Trustees Brooklyn vs. Patchen* (8 Wend. [N. Y.], 47), wherein the writ of certiorari was granted to correct abuses of discretion by inferior tribunals.

But without passing definitely on this proposition, it is sufficient answer to respondents' contentions in this regard to indicate that if there was in fact such an abuse of discretion by the judge who entered the original order as to entitle the aggrieved parties to relief, their remedy, if any they had, was to be found in the institution of appropriate proceedings in this court, in like manner as in the case at bar the applicants attack the validity of the order entered by the respondent judge.

There can be no question as to the original jurisdiction in the premises of the judge who entered the order fixing the amount of the deposit. Until and unless it was set aside, the order entered by him could not, therefore, be wholly disregarded by the respondent judge merely on the ground that he was of opinion that his predecessor has so far abused his discretion in the premises, that he should be deemed to have' gone beyond or to have acted in excess of his jurisdiction in its issuance. We have already shown that the respondent judge was not clothed with power to set aside such an order after the deposit had been made by the railroad company; and it follows that if the respondent land companies were entitled to relief, it could be found only in appropriate proceedings in this court instituted for the purpose of vacating, annulling or setting aside the original order fixing the amount of the deposit to be made by the Railroad Company.

We think that what has been said disposes of all the substantial objections advanced by the respondents against the issuance of the writ and the grant of the prayer of the applicants; except their contention that the applicants have another adequate remedy by appeal and therefore should not be permitted to seek relief in certiorari proceedings.

To this it is sufficient answer to say that an examination of the statute clearly discloses that it was not the intention of the legislator to authorize an appeal from orders fixing the amount of the deposits the making of which secure to railway corporations the right of immediate possession of lands involved in expropriation proceedings; and that, even if an appeal did lie from such orders, the purpose and object of the "provisional and prompt" ascertainment of the amount of the deposit being to authorize the immediate entry of the railway corporation upon the lands involved in the proceedings, an appeal from an order, affecting adversely the statutory right of possession and issued without jurisdiction or in excess of the jurisdiction of the court wherein it is entered, would not furnish an adequate remedy in favor of a railway corporation entitled to the undisturbed possession of such lands for the purpose of completing its construction work at the earliest practicable date. The public as well as the railway corporation have an interest in the speedy termination of the work, and when it is made to appear that a court is proceeding without jurisdiction, or in excess of its jurisdiction, to interfere with the statutory right of possession and thus delay the work, the railway corporation will not be compelled to await the slower processes of a remedy by appeal and denied the speedier relief which may be furnished in certiorari proceedings.

Perhaps we should indicate, before concluding this opinion, that we have not considered or decided the contentions of counsel for applicants based on their claim of a right to the undisturbed possession of the lands in question, because of the tacit or express consent of the owners and occupants to the entry of the Railroad Company upon these lands prior to the institution of the expropriation proceedings in the court below. We have refrained from any discussion of these contentions because the facts upon which they are based are not unqualifiedly admitted by the pleadings; and because a ruling upon these contentions is not necessary for the final disposition of the case as submitted at this time.

We conclude that upon the pleadings submitted to us for judgment the applicants are entitled to the relief prayed for in their complaint.

The facts admitted and affirmatively disclosed in the pleadings make it unnecessary for us to issue formal orders directing the bringing up of the original record now on file in the court below; and without stopping to consider whether the answers of the respondents should be treated technically as responses to our order "to show cause," or as answers to the complaint to which a formal demurrer has been interposed, we are of opinion that unless the answers are amended hereafter by the addition of new allegations of fact sustaining the jurisdiction of the respondent judge in the premises, which we do not anticipate, judgment should be entered in this court declaring the order complained of to be null, void and without effect.

Unless, therefore, the answers of the respondents are amended in the meantime as above indicated, let judgment be entered ten days from the date of the filing of this opinion declaring the order entered in the court below on the 18th of February 1915, as set forth in the complaint, null, void and without effect, with the costs of these proceedings against the respondent land companies; and twenty days thereafter let a duly certified copy of that judgment be remitted to the clerk of the Court of First Instance of Tayabas Province for file with the expropriation proceedings wherein the order was entered; and at the same time let the record of these certiorari proceedings be filed with the archives of original proceedings in this court. So ordered.

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

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## CONCURRING

**MORELAND, J.,**

I agree.

(1) In condemnation proceedings the court has such authority only as is expressly conferred by statute or is clearly incident to the complete fulfillment of the duties laid on it by the statute.

No express authority is found in the statute for the order objected to in this case and its issuance is not necessary to the performance of the duties laid on the court by the statute.

(2) The order of the court fixing the amount of the deposit which the plaintiff company must make under Act No. 1592 before entering into possession of the land involved in the proceeding was in the nature of an offer. Being of such a nature the company had the right to refuse to accept it. It could have rejected the offer and discontinued its proceeding if it found the amount fixed excessive or for any other reason.

(3) The condition fixed by the court as a prerequisite to entry having been accepted by the company, the court had no authority to make the condition more onerous after the company, on the faith of the condition already met, had expended on the land vast sums of money in making its roadbed and laying its rails.

(4) The assignees of the original owners of the land, who took the lands pending the proceedings, acquired no rights which justified or could support their motion to increase the amount of the deposit.

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