

RAFAEL C. DE YNCHAUSTI, PLAINTIFF AND APPELLANT, VS. THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, THE GOVERNMENT OF THE PHILIPPINE ISLANDS AND THE PROVINCIAL GOVERNMENT OF RI...*G.R. No. 11647. September 26, 1917*

Ponente: CARSON, J.

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Early in the year 1912, the Manila Electric Railroad and Light Company was duly authorized by the Director of Public Works, acting on behalf of the Government of the Philippine Islands and of the Province of Rizal, to construct an electric railroad track upon the provincial highway running from the city of Manila to the municipality of Parañaque. The precise location of the track was designated by that official, who authorized and required the company to construct its track along the side of the road. The track was completed toward the end of the year 1912, and thereafter some question appears to have arisen as to the width of the highway, the plaintiff in this action insisting that the ancient highway was not as wide by 3 meters as was claimed by the Director of Public Works; and further, that the railroad company had encroached on his land, and is now occupying a strip thereof some 200 meters long and 3 meters broad. The prayer of the complaint is for recovery of possession of this strip of land and for damages for the alleged unlawful taking and detention, in the sum of P1,000.

It is not necessary for us to consider any of the contentions of the parties with regard to the width of the old highway, because for the purposes of this appeal, it is substantially admitted that at the time when the railroad track was laid down, the plaintiff's predecessor in interest was the owner in fee of the strip of land described in the information, over which the railroad track was laid, he having had his title thereto duly registered under the provisions of the Land Registration Act; and because, further, no evidence was submitted which would sustain an affirmative finding as to the true width of the ancient highway.

We may limit ourselves, therefore, to a consideration of the respective rights of the parties, in a case wherein a railroad corporation, empowered by law to have lands condemned for its use in appropriate expropriation proceedings, and expressly authorized to lay its track along a public highway, enters upon and occupies with its tracks lands belonging to private individuals, without their express consent and without instituting expropriation proceedings, it appearing that the entry was made in good faith, under the mistaken belief that these lands were a part of a public highway on which the corporation was duly authorized to lay its track, and further, it appearing that the owner, or owners of the land thus taken, made no objection to the entry by the corporation and the laying of the track until after the work had been completed.

If the railroad corporation were not clothed with any special or exceptional rights under its charter, touching the condemnation of lands necessary for its use, it is clear that under the general provisions of law, the plaintiff would be entitled to elect, either to recover the value of the lands thus taken, or to recover possession of these lands, upon condition that he first reimburse the corporation for the expenditures made upon the land while in its

possession. This under the terms of article 361 of the Civil Code, which is as follows:

"The owner of the land on which building, sowing, or planting is done in good faith shall have the right to appropriate as his own the work, sowing, or planting after the indemnity mentioned in articles 453 and 454, or, to oblige the person who has built or planted, to pay to him the value of the land and to force the person who sowed to pay the proper rent."

But the railroad corporation being clothed with the right to take the land in question in condemnation proceedings, it would be a manifestly vain and useless formality to render judgment for the restoration of possession upon payment of an indemnity to reimburse the railroad corporation for its expenditures on the land—with the full knowledge that before such judgment could be executed the railroad corporation could and would take possession of the land in condemnation proceedings upon payment of compensation for the value of the land and the improvements made upon it. It is clear, therefore, that with relation to lands which a railroad corporation is authorized under its charter to have condemned for its use, and which have been entered upon and occupied by the railroad corporation, under a claim of right and in good faith, but without first instituting the appropriate condemnation proceedings, the right of election secured to the landowner in articles 361 and 453 of the Civil Code has, in substance and effect, been destroyed by the enactment of the legislation conferring the power upon the railroad corporation to take possession in condemnation proceedings. The only right secured to the landowner in such cases is the right to compensation for the lands taken, and resultant damages to his lands not taken, which right he may enforce in an ordinary action to compel the corporation to pay the value of the land under the terms of article 361 of the Code, or, if he so desires, by the institution of appropriate proceedings to compel the corporation to have the land condemned and to pay the compensation and damages assessed in the course of the condemnation proceedings.

Substantially identical results have been secured in the United States by the application of equitable principles to similar states of fact, as will appear from the following citation from a few of the leading cases.

"The owner of land, who stands by, without objection, and sees a public railroad constructed over it; can not, after the road is completed, or large expenditures have been made thereon upon the faith of his apparent acquiescence, reclaim the land, or enjoin its use by the railroad company. In such case there can only remain to the owner a right of compensation." (*Goodin vs. Cin. and Whitewater Canal Co.*, 18 Ohio St., 169.)

"One who permits a railroad company to occupy and use his land and construct its road thereon without remonstrance or complaint, cannot afterwards reclaim it free from the servitude he has permitted to be imposed upon it. His acquiescence in the company's taking possession and constructing its works under circumstances which made imperative his resistance, if he ever intended to set up illegality, will be considered a waiver. But while this presumed waiver is a bar to his action to dispossess the company, he is not deprived of his action for damages for the value of the land, or for injuries done him by the construction or operation of the road." (*St. Julien vs. Morgan etc., Railroad Co.*, 35 La. Ann., 924.)

The trial judge denied plaintiff's prayer for possession, but being of opinion that he is entitled to recover the value of the land, gave judgment for an amount equal to its assessed value. From this judgment plaintiff appealed, and insists upon his right to recover possession of the land occupied by the railroad corporation and damages for its detention. In the light of what has been said, it is clear that the trial judge correctly declined to give judgment for possession; but we think that he erred in entering judgment for the plaintiff and against the defendant in an amount equal to the assessed value of the land.

No such relief was sought or prayed for by the plaintiff, and no evidence was introduced into the record in support thereof. The trial judge appears to have assumed, without proof, that the assessed value of the land might be taken

as its true market value; and however this may be, it is a fact that there is no evidence in the record upon which to base a finding as to the true value of the land, even if a judgment could properly be entered in favor of the plaintiff for damages the amount of which he did not allege or make any attempt to prove at the trial.

We conclude that the judgment entered in the court below should be reversed without costs in this instance, and that the complaint in this action praying for possession and for damages for the alleged unlawful detention of the land in question, should be dismissed with the costs in first instance against the plaintiff; but that such dismissal of the complaint in this action should be without prejudice to the right of the plaintiff to institute the appropriate proceedings to recover the value of the lands actually taken, or to compel the railroad corporation to take the necessary steps to secure the condemnation of the land and to pay the amount of the compensation and damages assessed in the condemnation proceedings.

In view of our dismissal of the complaint in this action, and of what has been said heretofore as to the rights of the plaintiff in the premises, there is no need at this time for a pronouncement as to the relative rights and liabilities of the defendant railroad corporation, and the Government of the Philippine Islands and the provincial government of Rizal, who were brought into this action at the instance of the railroad corporation, as codefendants, on the ground, as it is alleged, that the corporation occupied the land in question by authority of and under instructions from the duly authorized representative of those government entities. So ordered.

Arellano, C. J., Araullo, Street, and Malcolm, JJ., concur.

Johnson, J., did not take part.

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