

**THE PROVINCIAL GOVERNMENT OF RIZAL, PHILIPPINE ISLANDS,
PLAINTIFF AND APPELLANT, VS. FILOMENA CARO DE ARAULLO ET
AL., DEFENDANTS AND APPELLEES. AMALIA ARCEGA DE BASA AND
RAMON A...**

G.R. No. 36096. August 16, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal by the provincial government of Rizal from the decision of the Court of First Instance of that province dated March 21, 1931, and the additional decision of March 23, 1931, and the order or decision of April 17, 1931, fixing the damages to be paid by the plaintiff for the property expropriated for the extension of Taft Avenue from the limits of the City of Manila, through the municipality of Pasay, to its intersection with the Manila South Road. Fifty-two lots and the improvements on ten lots are involved in the appeal, as follows:

- Lot No. 1 and improvements of Filomena C. de Araullo,
- Lot No. 3 and improvements of J. M. McIntyre,
- Lot No. 7 and improvements of Luisa Atanacio,
- Lot No. 8 of Luisa Atanacio,
- Lot No. 11 of Adolfo Otto Scheerer,
- Lot No. 13 and improvements of Donato Espinosa,
- Lot No. 26 and improvements of B. M. Lauritzen,
- Lot No. 30 and improvements of Jose Rueda Arias,
- Lot No. 31 of Joaquin Lim Ang,
- Lot No. 33 of Gonzalo Go Kiolay,
- Lot No. 34 of Roy S. Springer,
- Lot No. 35 of Roy S. Springer,
- Lot No. 37 of Emiliana Cordova,
- Lot No. 39 of Agapito Sanchez,
- Lot No. 41 and improvements of J. J. Dunbar,
- Lot No. 42 of Aurelia Arcega de Basa,
- Lot No. 45 of Aurelia Arcega de Basa,
- Lot No. 49 of Andres and Alfredo Wieneke,
- Lot No. 52 of Aquilina San Miguel,
- Lot No. 53 of Jose Villanueva,
- Lot No. 54 of Proceso Orca,
- Lot No. 54-A of Ambrosio Hernandez,
- Lot No. 55 of Pascual Villanueva,
- Lot No. 56 of Flaviano de la Cruz,
- Lot No. 57 of Pascual Villanueva,
- Lot No. 58 of Flaviano de los Santos,
- Lot No. 60 of Ines Vda. de Taylo,

Lot No. 61 of Ines Vda. de Taylo,
Lot No. 61-A of Josefa de los Santos,
Lot No. 61-B of Canuto Cuneta,
Lot No. 62 of Esteban Marcelino,
Lot No. 63 of Esteban Marcelino,
Lot No. 64 of Damaso Ignacio,
Lot No. 64-A of Alfredo Roench,
Lot No. 65 of Alfredo Roench,
Lot No. 66 and improvements of Aquilina de la Cruz,
Lot No. 67 of Enrique Vito Cruz,
Lot No. 69 of Carlos Cruz,
Lot No. 72 of Flaviano de los Santos,
Lot No. 73—Improvements only—of (a) Q. S. Lockart and (b) L. H. Golucke,
Lot No. 76 of Angela Cordero,
Lot No. 77 of Ramon Agtarap,
Lot No. 78 of Ramon Agtarap,
Lot No. 86 of Jacinta Z. de Cailles,
Lot No. 87 of Simeon Taylo,
Lot No. 88 of Flaviano de los Santos,
Lot No. 92 of Guillermo Musngi,
Lot No. 94 of Proceso Orca,
Lot No. 96 and improvements of Felisa Cruz,
Lot No. 98 of Flaviano de los Santos,
Lot No. 100 of Vicente Reyes del Rosario,
Lot No. 101 of Anastacio Dizon,
Lot No. 102 of Alejandro Anareta.

The defendant Amalia Arcega de Basa also appealed from the decision of March 21, 1931 with respect to lots 42 and 45, and the defendant Ramon Agtarap as to lots 77 and 78.

The complaint was filed on May 31, 1928. Defendants appeared and admitted plaintiff's right to expropriate the property in question, and the court appointed four commissions composed of—

(a) Pedro Magsalin, Tomas Arguelles, and Salvador Barrios;

(b) Mariano Melendres, Tomas Arguelles, and Ramon Borrromeo;

(c) Tomas Arguelles, Tomas de Guzman, and Celestino P. Raos; and

(d) Jose P. Pigao, Tomas Arguelles, and Manuel V. Dadivas, respectively, to hear the parties and view the premises, and assess the damages to be paid for the condemnation, and to report their proceedings to the court. The only question involved in the case was the determination of the damages to which the defendants were entitled.

In the case of most of the lots the evidence consists of the owner's estimate of the value of his land at the time of the hearing in 1929 or 1930, and for the plaintiff the testimony of Colin M. Hoskins. Hoskins is a real estate broker and appraiser of real property, and at the time of the hearing had been engaged in that business for seven years, and had participated in real estate transactions in the municipality of Pasay and in the land taken for the extension of Taft Avenue. He had examined the property to be condemned, and was in a position to express a reliable opinion as to its market value. We have not overlooked the fact that he was being paid for his services by the plaintiff. He testified as to the value of the property in question in 1927 before the extension of Taft Avenue

was laid out, and as to its increased value at the time of the hearing.

"ERROR NO. I

"The lower court erred in declaring that the properties expropriated should be appraised according to their value on June 1, 1928, and not that in 1927."

The fiscal's first assignment of error raises one of the principal questions to be decided. Are the damages to be based upon the value of the property when the district engineer of Rizal Province entered upon the land and laid out the extension of Taft Avenue in 1927, or the value on May 31, 1928 when the condemnation proceedings were filed, or on the value of the property at the time of the hearings before the commissioners in 1929 and 1930?

In their report of October 25, 1930 (p. 142, bill of exceptions), commissioners Magsalin, Arguelles, and Barrios state that in appraising the land expropriated they gave great weight to Hoskins' valuation of the land for 1927, which they increased slightly (A la verdad, los comisionados al fijar los precios de los terrenos, han tenido mucho en cuenta los valores fijados por el experto del Gobierno, Mr. Hoskins, para los lotes de los demandados desde el año 1927 con un ligero aumento). An examination of the record as to the individual lots shows, however, that in most cases the commissioners disregarded the evidence and substituted their opinion as to the value of the property, based on the inspection made by them. This they were not authorized to do (*Manila Railroad Co. vs. Aguilar*, 35 Phil., 118).

After referring to the case of the *Manila Railroad Co. vs. Caligsihan* (40 Phil., 326), the trial judge said that the present expropriation was begun June 1, 1928 (esta expropiacion ha comenzado el 1.º de junio de 1928). It may be inferred from this statement that he was under the erroneous impression that the province did not lay out the street or take possession of the property before the filing of these proceedings (p. 179, bill of exceptions).

The trial judge also held that there was a natural increase in the value of the property from 1927 to 1928 (Es de estimar que de 1927 a 1928 ha transcurrido bastante tiempo, durante el cual, como caso normal y de ordinario curso, las propiedades tomen incremento en su valor; p. 179, bill of exceptions); that in the ordinary course of events land increases in value from time to time, and the appraisal in this case is based almost entirely on the prices fixed by Hoskins for the year 1927, plus an extra price in accordance with the petition of counsel for some of the defendants, this extra price appearing to be the natural increase in value of the properties in question from 1927 to the date of the expropriation (p. 239, bill of exceptions).

The record does not sustain these findings of the trial court.

In the case of the *Manila Railroad Company vs. Caligsihan* (40 Phil., 326, 329), cited by the trial judge, this court said:

"It is a rule of general application that the value of the property taken by eminent domain should be fixed as of the date of the proceedings, and with reference to the loss the owner sustains, considering the property in its condition and situation at the time it is taken, and not enhanced by the purpose for which it is taken. Our law says that the compensation shall be 'just' and, 'to be exactly just, the compensation should be estimated as of the time of the taking.' "

The rule just quoted contemplates a case where the taking of the property by eminent domain coincides with the filing of the proceedings, but in the case at bar the plaintiff through its agents entered upon the property, with the consent of the owners, and laid out the street in 1927, and entrusted to the Director of Public Works and other officials the negotiations as to the price to be paid therefor. A few public spirited citizens offered to donate their land; others agreed to accept what the authorities deemed a reasonable price, but in most cases no amicable agreement could be reached as to the value of the property taken, and in order to settle the matter plaintiff filed

these condemnation proceedings on May 31, 1928. The improvements existing on the land when it was taken had been removed or destroyed in most cases before the filing of these proceedings ("No ha encontrado las mejoras reclamadas porque segun se ha probado ya habian sido destruidas antes aun de incoarse este expediente; pero ha encontrado otras de igual naturaleza y condicion en los alrededores;" "En algunos casos la Comision no ha encontrado las mejoras reclamadas porque segun pruebas ya habian sido destruidas mucho antes de incoar este expediente, pero en otros casos la Comision ha encontrado en dichos terrenos ciertas mejoras reclamadas y otras alrededor de los mismos". Reports of the commissioners, pp. 67 and 125, bill of exceptions).

The question at issue is stated by Gutierrez Repide & Monzon, attorneys for the appellee Luisa Atanacio, as follows: "The Provincial Government of Rizal, which hereafter will be designated as appellant acting thru its District Engineer, prepared the location plan and commenced the opening of the Taft Avenue Extension in Pasay about the year 1927. Among the properties thus taken possession of by the appellant was a portion of the lot of the herein appellee Luisa Atanacio. Although the appellant actually took material possession of all the properties necessary for the opening and extension of the Taft Avenue Extension in the year 1927, the expropriation proceedings were actually begun by the filing of the complaint on June 1, 1928. The only question before this court for decision is what is the just and reasonable compensation to which the appellee is entitled for lots 7 and 8 taken by the appellant through the exercise of the right of eminent domain. It is contended for the appellant that the value of the said two lots ought to be P3.50 per square meter which was the price in 1927 and not P5 per square meter which was the value fixed by the commissioners and approved by the trial judge corresponding to the year 1928 when the expropriation proceedings were actually commenced in the Court of First Instance of Rizal."

As clearly appears from the evidence of record, the value of the property in question was greatly enhanced between the time when the extension of the street was laid out and the date when the condemnation proceedings were filed, because of the fact that one of the widest and most important streets in the City of Manila was to be extended through the municipality of Pasay, thereby making the land affected practically a part of the City of Manila and giving it a frontage on one of the city's principal boulevards. The property had further increased in value when the commissioners held hearings a year and a half after these proceedings were filed. In other words, the value of the property was enhanced by the purpose for which it was taken. In our opinion "the owners of the land have no right to recover damages for this unearned increment resulting from the construction of the public improvement for which the land was taken. To permit them to do so would be to allow them to recover more than the value of the land at the time when it was taken, which is the true measure of the damages, or just compensation, and would discourage the construction of important public improvements.

As the Supreme Court of the United States said in its decision of the case of the United States vs. Chandler-Dunbar Water Power Company (229 U. S., 53), which decision was followed by this court in the case of the Manila Railroad Co. vs. Caligsihan, the property is to be considered in its condition and situation at the time it is taken, and not as enhanced by the purpose for which it is taken.

"The fundamental doctrine that private property cannot be taken for public use without just compensation requires that the owner shall receive the market value of his property at the time of the taking, unaffected by any subsequent change in the condition of the property." (20 C. J., 826, 828.)

"The principle of these decisions, which requires compensation for property taken for public use to be estimated with special reference to its value at the time of the appropriation or taking, is manifestly just to all concerned. By no other rule, in cases of condemnations for uses of great public interest and local benefit, could the valuation of property in the assessment of damages be so successfully guarded against the influence of enhanced values resulting specially from the enterprise" (Missouri Pac. Ry. Co. vs. Hays, 15 Neb., 224, 231; 18 N. W., 51.)

It is generally held, as it was in the Nebraska case just cited, that the valuation of the property taken should be made as of the time of the filing of the condemnation proceedings. That is a fixed and convenient date, and it usually precedes or coincides with the taking of the property; but in the case at bar the plaintiff appropriated the property with the consent of the landowners, and without the filing of any expropriation proceedings, in the expectation that the parties would be able to reach an agreement out of court as to the value of the property taken, and the condemnation proceedings were not filed until it was found much later that no such agreement could be reached as to part of the property. Under those circumstances the value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings.

In the case of *Wier vs. St. Louis, Ft. S. & W. R. Co.* (40 Kan., 130; 19 Pac. Rep., 316, 322), the Supreme Court of Kansas said: "The general current of authorities is that in all such cases compensation should be ascertained and assessed as of the time when the property was taken. There is some diversity of opinion as to what constitutes a taking where the right of way is acquired by proceedings in advance of actual occupancy; but where, as in this case, the possession is taken by consent of the owner, followed by the location and construction of the road, the time of going into such actual possession is clearly the time of taking, rather than the period of condemnation proceedings, which, for some reason, may have been postponed. This subject has already been fully considered by this court in two cases, where it is decided that, under circumstances such as are presented here, the damages will be measured as of the time when the company first takes possession of the land, and occupies it as a right of way. (*Railway Co. vs. Andrews*, 26 Kan., 702; *Cohen vs. Railroad Co.*, 34 Kan., 158; 8 Pac. Rep., 138; see also, the numerous cases there cited.)"

The conclusion of the trial court to the effect that there is a steady increase in the value of land is not well founded. Land like other property increases or decreases in value according to the general economic conditions prevailing, and for special reasons, but that is a matter of proof.

"ERROR NO. II

"The lower court erred in appraising lot No. 69 of the defendant Carlos Cruz at P7 a square meter."

This lot was originally appraised by the commission at P7 a square meter, but it subsequently increased the valuation to P7.50, because only a small portion of the lot was left. The defendant claimed that his land was worth P20 a square meter. It was assessed for taxation at P1 a square meter, and according to Hoskins was worth P3 in 1927, and the triangular portion remaining, which is suitable for a gasoline station, is worth P7 a square meter.

Mariano Molo testified as to the sale of a parcel of land on February 14, 1927 at P7 a square meter (Exhibit A-3), but the land to which he referred is situated on F. B. Harrison Street or the Manila South Road, the principal commercial street of Pasay, and 400 meters from the land in question. Defendant's Exhibit A-2 evidences the sale of lot No. 8 of the subdivision plan No. 8138 on August 15, 1927 for P6 a square meter, but it appears that the area of the portion sold was only 165 square meters, and apparently this lot is just beyond the limits of the City of Manila and far from the lot now in question.

On the ground that the original appraisal of the commission was sustained by a preponderance of the evidence, the trial judge fixed the value of this lot at P7 a square meter. We see no reason for rejecting Hoskins' valuation of this land, taking into consideration the fact it was far from the City of Manila and not situated on an important street. The decision of the lower court is therefore modified, and the value of Lot No. 69 is fixed at TS a square meter.

"ERROR NO. III

"The lower court erred in appraising lots Nos. 1 and 72 at P6.50 a square meter."

Lot No. 1 of Filomena Caro de Araullo

The commission appraised this lot at P6.50 per square meter, because it is high land and adjoins the City of Manila, with an outlet to Calle Sandejas. Hoskins testified that the value of this land in 1927 was P5 per square meter; that he intervened in the purchase of it by the defendant, who paid P5 per square meter therefor. The trial judge accepted the valuation of the commission on the ground that the value of the land had increased from 1927 to 1928. He said:

"Es de estimar que de 1927 a 1928 ha transcurrido bastante tiempo, durante el cual, como caso normal y de ordinario curso, las propiedades tomen incremento en su valor." For the reasons which we have stated, the defendant is entitled to recover the value of her land when it was taken in 1927. The decision of the lower court is therefore modified, and the value of this lot is fixed at P5 a square meter.

Lot No. 72 of Flaviano de los Santos

This lot was first appraised by the commission at P6 a square meter. The appraisal was subsequently increased to P6.50 a square meter. Hoskins testified that this land was worth P3 a square meter. It appears that lot No. 71, which was similarly situated as lot No. 72, was purchased by the plaintiff for P4.50 a square meter in accordance with the order of the court of February 3, 1931. The valuation of lot No. 72 is accordingly reduced to P4.50 a square meter.

"ERROR NO. IV

"The lower court erred in appraising lots Nos. 3, 34, 35, 61-A, 61-B, 62, 64-A, 65, and 77 at P6 a square meter."

Lot No. 3 of J. M. McIntyre

This was an interior lot, assessed for taxation at P0.80 a square meter. Hoskins appraised it at P5 a square meter, but the commission increased the appraisal to P6 a square meter in order to indemnify the owner for the expense of moving his house, and the trial judge approved the action of the commission. The cost of the removal of defendant's house was not proved, nor was it proved that the defendant had a house on the land appropriated by the plaintiff. The only evidence presented by the defendant was an affidavit as to an offer he had received for his land. This affidavit was clearly inadmissible. The valuation of this lot is therefore fixed at P5 a square meter.

Lot No. 34 of Roy S. Springer

The commissioners appraised this lot at P5 a square meter, that being in their opinion the value of adjoining lots in the same condition. The trial judge increased the valuation to P6 a square meter. Hoskins testified that this lot was worth P4.50 a square meter in 1927 and P8 a square meter in 1929. Jose Araneta, a real estate broker, testified that this lot was purchased by the defendant in October or November, 1928 for P6.75 a square meter, but he admitted that some years prior thereto the land was worth P3 or P4 a square meter. Defendant's attorneys maintain that the land should be appraised according to its value in June, 1928, but we have already rejected that contention. We see no reason for not accepting the testimony of Hoskins, and the value of this lot is accordingly fixed at P4.50 a square meter.

Lot No. 35 of Roy S. Springer

This was an interior lot, which was appraised by Hoskins and the commission at P4 a square meter, but this valuation was raised by the trial judge to P6 a square meter. Jose Araneta testified that this lot was purchased by the defendant in October or November, 1928 for P6.50 a square meter and that that was its value at the time of the hearing in 1930. Neither the price paid by the defendant nor the value of the land in 1930 is controlling, but the

market value of the land when plaintiff took possession of it. The action of the trial judge in increasing the valuation of this lot from P4 to P6 a square meter is not justified by the evidence, and the value of said land is fixed at P4 a square meter.

Lot No. 61-A of Josefa de los Santos

The owner claimed P15 a square meter for this lot, because it was small and it would be difficult to find another similar lot in the same place. Hoskins testified that this lot was worth P5 a square meter in 1927. The commission appraised it at P6 a square meter, and this appraisal was approved by the trial judge on the ground that practically the whole lot had been expropriated, and that the damages caused thereby should be proportionately compensated. We find no evidence in the record to justify the appraisal of this lot at P6 a square meter, because the evidence neither shows the area of the remaining portion, which is described as insignificant, nor the amount of the damages. The value of this lot is fixed at P5 a square meter.

Lot No. 61-B of Canuto Cuneta

What we have said with respect to lot 61-A applies to this lot, and its value is accordingly fixed at P5 a square meter.

Lot No. 62 of Esteban Marcelino

This lot was appraised by the commission at P6 a square meter, and this valuation was approved by the trial judge. The owner claimed P15 a square meter, because he had filled the lot, but he could not state how much he had spent for filling it. This lot is assessed for taxation at P0.50 a square meter. Hoskins testified that it was worth P4 a square meter in 1927 and P7 in 1929. It appears that only a small portion of the lot is not included in the expropriation, but the evidence does not show the area of this remaining portion or the amount of the damages. The appraisal of the commissioners which was approved by the trial court is not sustained by the evidence, and the value of this lot is fixed at P4 a square meter.

Lots Nos. 64-A and 65 of Alfredo Roench

The commission valued these lots at P6 a square meter, because the land was high and the remaining portions irregular in shape and not suitable for building site, and this appraisal was approved by the trial judge. It appears that these two lots were purchased by the defendant on February 27, 1928 for P1 a square meter. Hoskins declared that the value of this land in 1927 was P1.20 a square meter and P4.50 at the time of the hearing. It appears that prior to the construction of the Taft Avenue extension these lots had no outlet to any public street except through a narrow road. The valuation of the commission, which was accepted by the trial judge, is not sustained by the evidence, and reports not based on the evidence should be disregarded.

The appellee contends that he was able to buy this land for a peso a square meter, because the owner was forced to sell it; but it will be observed that when Roench bought this land in February, 1928 the extension of Taft Avenue was already laid out. The value of these two lots is fixed at P1.20 a square meter.

Lot No. 77 of Ramon Agtarap

This lot, which is assessed for taxation at P0.50 a square meter, was appraised by the commission at P6 a square meter, and this valuation was accepted by the lower court. Hoskins testified that this lot, like lot No. 76, was worth P4 a square meter in 1927, and that an additional sum of P1 a square meter would be sufficient to indemnify the owner for the damages sustained by reason of the fact that the remaining portion of this land is practically unserviceable.

The defendant Ramon Agtarap also appealed from the decision of the court as to this lot. He claimed at the trial

that his property was worth P15 a square meter, because in 1926 and 1927 he wished to buy the adjoining property for P8 a square meter, but the price demanded was P12. Such evidence, if admissible, is of no consequence in determining the market value of the land in question. Defendant's attorneys contend that the price fixed for this lot should be at least P7 a square meter, because Hoskins testified that at the time of the hearing on December 27, 1929 it was worth P7 a square meter. For the reasons which we have already set forth, the defendant is entitled to recover the market value of his property when it was taken in 1927, and not its value at the time of the hearing. The value of this lot is therefore fixed at P5 a square meter.

"ERROR NO. V

"The lower court erred in appraising lots Nos. 11, 13, 31, 60, 61, and 64 at P5.50 a square meter."

Lot No. 11 of Adolfo Otto Scheerer

The commission appraised this lot at P5.50 a square meter, because it was high land and the remaining portion was disfigured by the expropriation. Hoskins testified that this land was worth P5 a square meter in 1927. The trial court approved the valuation of the commission. The contention of the appellant as to this lot is not sustained by the record. It appears that the difference in question of P0.50 a square meter was awarded to the defendant as consequential damages. The decision of the trial court as to this lot is affirmed.

Lot No. 13 of Donato Espinosa

This lot was appraised by the commission at P5.50 a square meter on the ground that it was in the same condition as lot No. 12, which was appraised by the commission at that price. Hoskins testified that lot No. 12 was worth P4.50 a square meter in 1927. It does not appear that the defendant presented any evidence as to the value of this lot. Ildefonso Hernandez was called as a witness, but he did not testify as to the value of the land. Ciriaco Gaspar, the owner of lot No. 12, accepted the appraisal of P4.50 a square meter. The value of Lot No. 13 is fixed at P4.50 a square meter.

Lot No. 31 of Joaquin Lim Ang

This lot was originally appraised by the commission at a square meter, but this appraisal was subsequently increased to P5.50 a square meter because of defendant's claim for 1,000 loads of dirt removed by the plaintiff from this lot. It appears from the evidence that prior to the opening of the Taft Avenue extension the lot in question was an interior lot and its only outlet was an alley leading to Calle Buendia. Hoskins testified that the value of this lot in 1927 was P4 a square meter and at the present time from P9 to P10. Taking into consideration defendant's claim for damages, which was allowed by the commission and the trial judge, we fix the value of this lot at P4.50 a square meter.

Lots Nos. 60 and 61 of Ines Vda. de Taylo

The defendant claimed that these two lots were worth P15 a square meter. Hoskins testified that the value of the land in question in 1927 was P5 a square meter. The commission appraised the land at P5.50 a square meter and this appraisal was approved by the court. Although the reason of the commission for fixing the value of this lot at P5.50 does not clearly appear, nevertheless it may be inferred from what is said in the report that this valuation was based upon the testimony of Hoskins to the effect that this land was worth P5 a square meter in 1927. The value of the land in 1927 must govern, and the valuation of these two lots is fixed at P5 a square meter.

Lot No. 64 of Damasa Ignacio

Alejandro Pascual, son-in-law of Damasa Ignacio, testified that this land was worth P15 a square meter at the time of the expropriation.

Hoskins testified that this land was worth P4 a square meter in 1927, and P7 at the time of the hearing, taking into consideration the fact that it was 30 centimeters below the level of Pilapil street. The commission, without giving any reason therefor, declared this land to be worth P5.50 a square meter, and this appraisal was approved by the trial judge. The evidence does not sustain this appraisal, and the value of this lot is fixed at P4 a square meter.

"ERROR NO. VI

"The lower court erred in appraising lots Nos. 7, 8, 33, 37, 39, 41, 76, 78, 96, and 98 at P5 a square meter."

Lots Nos. 7 and 8 of Luisa Atanacio

These lots were situated very near the limits of the City of Manila, and were found by the commission to be in the same condition as lot No. 3 belonging to J. M. McIntyre and were assessed at P6 a square meter. Hoskins testified that these lots were worth P3.50 a square meter in 1927, but as we have already seen he found lot No. 3 to be worth P5 a square meter in 1927. He did not give any reason for the difference in price. The defendant admits that the plaintiff took possession of the property in question in 1927. It appears that the defendant in a letter dated January 22, 1931 expressed her willingness to accept P5 a square meter, and the trial judge fixed the value of these lots at that price. We see no reason for making any distinction between the value of these two lots and lot No. 3. The decision of the lower court as to these two lots is therefore affirmed.

Lot No. 33 of Gonzalo C. Go Quiolay

Hoskins testified that the value of this lot in 1927 was P3.50 a square meter. The defendant asked the absurd price of P20 a square meter. The commission appraised it at P5 a square meter on the ground that it was in the same condition as lots Nos. 29 and 31, and the appraisal of the commission was approved by the lower court. The appellant maintains that according to the testimony of Hoskins this lot is inferior to lots 29 and 31, but apparently this contention is not sustained by the record. The value of this lot is fixed at P4 a square meter.

Lot No. 37 of Emiliana Cordova

Hoskins testified that the value of this lot in 1927 was P4 a square meter, and not P4.50 a square meter, as stated in appellant's brief. The commission appraised this lot at P5 a square meter for the reason that it was in the same condition as "the preceding lots", and the appraisal of the commission was approved by the trial judge. The finding of the commission is too vague to sustain the judgment, and the value of this lot is fixed at P4 a square meter.

Lot No. 39 of Agapito Sanchez

Hoskins testified that this lot was worth P4 a square meter in 1927. The defendant presented no competent evidence as to the value of the land. The commission appraised this lot at P5 a square meter "por las mismas razones que alega en cuanto a los lotes anteriores", and the trial judge approved the appraisal of the commission. The evidence does not sustain the finding of the lower court, and the value of this lot is fixed at P4 a square meter.

Lot No. 41 of J. J. Dunbar

Hoskins testified that this lot was worth P4 a square meter in 1927. The defendant presented an affidavit in which he claimed P8 a square meter, but subsequently offered to accept the commission's appraisal of P5 a square meter. There is no competent evidence to sustain the valuation of the commission, which was approved by the trial judge, and the value of this lot is fixed at P4 a square meter.

Lot No. 76 of Angela Cordero

Hoskins testified that this lot was worth P4 a square meter in 1927. No competent evidence was presented by the

defendant. The commission allowed the defendant P5 a square meter, which was approved by the court, partly for the reason that the defendant had been slightly damaged because of the conformation of the land not expropriated. The record does not justify this finding of the commission as to consequential damages, especially in view of the fact that Hoskins testified that the remaining portion of defendant's land is now worth P7 a square meter. The value of this lot is therefore fixed at P4 a square meter.

Lot No. 78 of Ramon Agtarap

Hoskins testified that this lot was worth P4 a square meter in 1927. The defendant claimed the unreasonable price of P15 a square meter, and was permitted to testify that in 1926 or 1927 he offered Angela Cordero, the owner of adjoining lot No. 76, P8 a square meter. The commission appraised this lot at P5 a square meter on the ground that it was in the same condition as lot No. 76, which was appraised at P5 a square meter. It appears, however, that in fixing the value of lot No. 76 at P5 a square meter the commission took into consideration certain consequential damages, but that reason does not apply in the case of lot No. 78. The trial court approved the appraisal of the commission, and both parties have appealed. The finding of the lower court is not sustained by the record. There is no competent evidence to offset the testimony of Hoskins, and the value of this lot is fixed at P4 a square meter.

Defendant's attorneys on page 5 of their brief say: "As to lot No. 78, the plaintiff-appellant claims that the defendant Ramon Agtarap has not presented any evidence at all (p. 21). This is a deliberate falsehood, because, as has been stated, Mr. Agtarap himself has testified as to the value (I, t. s. n. pp. 55-59, G. R. 35565)." Although the statement made in the fiscal's brief is not strictly accurate, because Agtarap was presented as a witness, there is not the slightest justification for characterizing the fiscal's statement as a deliberate falsehood, and he strongly disapprove of the use of such language.

Lot No. 96 of Felisa Cruz

According to the evidence this lot belongs to Felisa Cruz and her sister, Dolores Cruz. Hoskins testified that part of this lot is low and part high land, and that in 1927 it was worth P1.50 and P3 a square meter, respectively. Melecio Sabino claimed P17 a square meter, because he had filled the land, and that the lot was in the same condition as that of Carlos Cruz. The commission appraised the lot in question at P5 a square meter, and the trial judge accepted this appraisal. The trial judge found that the pretensions of the defendant were not sustained by the evidence. In our opinion the evidence did not justify the lower court in fixing the value of this lot at P5 instead of P3 a square meter, in view of the testimony of Hoskins. Plaintiff has expressed its willingness to pay P3 a square meter for the whole portion that was expropriated. The value of this lot is fixed at P3 a square meter.

Lot No. 98 of Flaviano de los Santos

Hoskins testified that this lot was worth P4 a square meter in 1927. It appears from the testimony of Meliton de los Santos that this land had an area of 730 square meters, and that all of it was expropriated except 30 square meters. This small remaining portion is probably unserviceable. The defendant presented no evidence as to the market value of his land further than to show that it was in the same condition as lot No. 72. The value of this last mentioned lot has been fixed by us at P4.50 a square meter, and taking into consideration defendant's consequential damages, we fix the value of lot No. 98 at P4.70 a square meter.

"ERROR NO. VII

"The lower court erred in appraising lots Nos. 26, 42, 58, 87, and 92 at P4.50 a square meter."

Lot No. 26 of Belle M. Lauritzen

As to this lot the commission said:

"El lote 26 de la expropiada Mrs. B. M. Lauritzen, cuyo resto ha sido grandemente beneficiado por la extension de la Avenida Taft, amillarado en P1 m. c. y tasado por Hoskins en P4.25 m. c., estara bien compensado con Cuatro pesos con cincuenta centavos solamente."

Hoskins testified that this lot was worth P4.25 a square meter in 1927 and P9 a square meter at the time of the hearing. Defendant claimed P12 a square meter, and was permitted to testify to having refused an offer of that price. This land was assessed for taxation at the rate of P1 a square meter. No competent evidence was offered to offset the testimony of Hoskins, and the value of this lot is fixed at P4.25 a square meter.

Lot No. 42 of Amalia Arcega de Basa

The commission appraised this lot at P4.50 a square meter, stating that the land was high in some parts and that the expropriation had left a portion which was almost unserviceable. The court approved the appraisal of the commission. Both parties have appealed. Hoskins testified that part of this lot was low and that the market value of the lot in 1927 was P2.75 a square meter, not P2.25 as stated in the decision and in plaintiffs brief. The defendant claims P5 a square meter. The only witness for the defendant was her attorney. According to the contention of the defendant the area of the lot in question is 2,341 square meters and the remaining portion not expropriated contains 440 square meters. We are of the opinion that by adding to the market value of the land in 1927, 25 centavos a square meter, the defendant will be compensated for any consequential damages which she may have suffered. The value of lot No. 42 is therefore fixed at P3 a square meter.

Lot No. 58 of Flaviano de los Santos

The commission appraised this lot at P4 a square meter, but increased its appraisal to P4.50 a square meter, because the expropriation had left a strip of land on either side of the street that was unserviceable. The revised appraisal of the commission was approved by the trial court. Hoskins testified that the land in question was worth P2.50 a square meter in 1927. It appears that the area of the land expropriated is 2,564 square meters and that the remaining portion is very small. The exact area of it is not given. Ten centavos a square meter on the portion condemned will probably be amply sufficient to compensate the defendant for any consequential damages. The value of Lot No. 58 is therefore fixed at P2.60 a square meter.

Lot No. 87 of the heirs of Simeon Taylo

The commission originally appraised this lot at P4 a square meter, but subsequently increased the valuation to P4.50, without giving any reason therefor. Ines Claudio, administratrix of the estate of the deceased Simeon Taylo, claimed P15 a square meter, stating that the lot in question was in the same condition as lots Nos. 60 and 61, which were appraised by Hoskins at P5 a square meter. It appears that the portion expropriated was very small, and that the remainder of defendant's land was greatly increased in value. Hoskins testified that the market value of this land in 1927 was P3.50 a square meter. The record shows that lots 60 and 61 had been filled to the street level, and that the valuation of P5 a square meter includes certain consequential damages. The value of the lot in question is fixed at P3.50 a square meter.

Lot No. 92 of Guillermo Musngi

The commission appraised this lot at P4.50 a square meter, because it was high land and because Hoskins testified that it was worth P4 a square meter in 1927. The trial judge approved the appraisal of the commission. As we already explained, the defendant is entitled to recover the market value of his land in 1927. The value of the lot in question is therefore fixed at P4 a square meter.

"ERROR NO. VIII

"The lower court erred in appraising lots Nos. 52, 53, 54, 54-A, 55, 56, 57, 63, 67, 86, 88, and 94 at P4 a square meter."

Lot No. 52 of Aquilina San Miguel, lot No. 53 of Jose nueva, lot No. 54 of Proceso Orca, lot No. 54-A of Ambrosio Hernandez and Pascual Villanueva, lot No. 55 of Pascual Villanueva, lot No. 56 of the heirs of Flaviano de la Cruz, and lot No. 57 of Pascual Villanueva.

Hoskins appraised lot No. 52 at P1.50 a square meter in 1927 and P2 a square meter in 1929; lots Nos. 53 and 54 at P2.50 a square meter in 1927; lots Nos. 54-A, 55, and 56 at P2 a square meter in 1927, and lot No. 57 at P2.50 a square meter in 1927. The defendants claimed P15, P12, P18, P15, P6, including the improvements, P6, including the improvements, and P6 a square meter, including the improvements, respectively.

The commission appraised all these lots at P4 a square meter, taking into consideration the different facts as to the several lots, and this appraisal was approved by the trial court. Contrary to the contention of the fiscal, these lots all appear to have fronted on Pilapil Street, and the commission found these lots to be in the same condition as lot No. 51. The attorney for the defendants maintains that the plaintiff accepted the appraisal of lot No. 51 of P4 a square meter and paid the owner of it at that rate, but the decision of the trial judge as to lot No. 51 does not appear in the record that has been elevated to this court. There is a sharp conflict in the evidence as to the character of some of the lots in question. While Hoskins testified that they were low lands and were used as zacate fields, the defendants maintain that they had been filled and were used for building sites and gardens. The truth probably is that small portions of the land had been filled. Taking into consideration all the facts in the case and that the commission as a rule valued the land expropriated according to what they deemed to be its value in 1928 or 1929 instead of its market value in 1927, we fix the value of the foregoing lots at P3 a square meter.

Lot No. 63 of Esteban Marcelino

The commission appraised this lot at P5 a square meter, because it was high land and the part not expropriated was disfigured. This appraisal was reduced by the lower court to P4 a square meter. Hoskins testified that this land was 20 centimeters below the street level, and that its market value in 1927 was P1.20 a square meter. It appears from the evidence that this lot was assessed at 20 centavos a square meter; that it was an interior lot, and that the remaining portion, which was slightly disfigured, was greatly benefited by the extension of Taft Avenue. Neither the valuation of the commission nor that of the trial judge is sustained by the evidence. The value of this lot is fixed at P1.20 a square meter.

Lot No. 67 of Enrique Vito Cruz

The commission appraised this lot at P4.50 a square meter, because it was high land. The trial judge reduced the valuation to P4 a square meter.

The defendant claimed P2 a square meter. He testified that he purchased it in 1921 at 32 centavos a square meter, and admitted that the remainder of the property would be benefited by the expropriation. He was permitted to testify to having received an offer of P3 a square meter in 1927.

It appears that this lot was assessed for taxation at 20 centavos a square meter. Hoskins testified that it was marshy land and lower than Pilapil Street, on which it fronted; that its market value in 1927 was P1.50 a square meter, but that at the time of the hearing it might be worth P4 a square meter. The evidence of record does not sustain the finding of the commission or that of the trial judge. The area expropriated was insignificant, being only 36 square meters. We fix the value of this lot at P1.50 a square meter.

Lot No. 86 of Jacinta Z. de Cailles, lot No. 88 of Flaviano de los Santos, and lot No. 94 of Proceso Orca

These lots were all appraised by the commission at P4 a square meter, and this appraisal was approved by the trial court.

Hoskins testified that the market value of lot No. 86 of Jacinta Z. de Cailles was P3.50 in 1927. The defendant did not present any evidence as to the value of the land, but the trial judge states in his decision that Hoskins in testifying as to lot No. 86 stated that it was worth P3.50 a square meter in 1927 and P7.50 a square meter in 1929. The court then found that the increase in price of 50 centavos a square meter allowed by the commission was within the natural increase of the value of the land included in the expropriation proceedings. This conclusion of the trial judge is clearly erroneous, and the value of the lot in question is fixed at P3.50 a square meter.

The commission appraised lot No. 88 at P4 a square meter for the same reasons that it appraised lot No. 87 at that price. Hoskins testified that lot No. 88 was worth P3.50 a square meter in 1927 and P7.50 a square meter in 1929. The defendant did not present any direct evidence as to the value of the lot in question. His only witness, his son, Meliton de los Santos, admitted that the land of his father was benefited by the opening of the street, and requested that he be allowed compensation at the same rate given to adjoining owners. We have already fixed the value of lot No. 87 at P3.50 a square meter, and in accordance with the evidence, we fix the value of lot No. 88 at the same price.

The portion of lot No. 94 of Proceso Orca that was expropriated was so small as to be almost negligible. No evidence was presented by the plaintiff or the defendant as to the value of this lot. It appears from an examination of the plan that it was¹ situated on the opposite side of Calle Pilapil from lots Nos. 54 and 54-A, which we have valued at P3 a square meter. The value of lot No. 94 is accordingly fixed at P3 a square meter.

"ERROR NO. IX

"The lower court erred in appraising lot No. 30 at P3.20 a square meter."

Lot No. 30 of Jose Rueda Arias

The commission first appraised this lot at P3 a square meter, taking into consideration the fact that the portion not included in the expropriation was unserviceable. In an additional report the commission increased the valuation of the land expropriated to P3.20 a square meter, and allowed the defendant P235 as damages for the destruction of the wall on two sides of the lot. Hoskins testified that the remaining portion was of no value, and that if the part expropriated was high land it was worth P4 a square meter in 1927, and if low land, P1 a square meter. The fiscal maintains that the commission was not authorized to change its valuation of the land and to file an amended report without permission from the court, and that the original valuation of P3 a square meter should be maintained. The trial judge states in his decision that the commission was authorized to present an additional report regarding the lot in question. After examining the record, we find no sufficient reason for sustaining the contention of appellant, and the decision of the lower court fixing the value of the land expropriated at P3.20 a square meter is affirmed.

"ERROR NO. X

"The lower court erred in appraising lots Nos. 45 and 49 at P3 a square meter."

Lot No. 45 of Amalia Arcega de Basa

This lot was appraised by the commission at P3 a square meter, and that appraisal was approved by the trial judge. Both parties appealed. Plaintiff contends that the valuation should be reduced to P1 a square meter in accordance with the testimony of Hoskins, while the defendant claims P5 a square meter. Hoskins testified that this lot is low and swampy, and that its market value in 1927 was P1 a square meter. It appears that the lot in question has an area of 6,820 square meters, and that the portion expropriated contains 2,500 square meters; that a portion of the

remaining land containing 1,361 square meters was disfigured, and 680 square meters of it rendered unserviceable. The rest of defendant's land was benefited by the expropriation. Defendant waived her claim for damages for the destruction of certain fruit trees, but the value of these trees was not determined. There is no evidence in the record to support defendant's claim. Taking into consideration all the facts in the case, we fix the value of the portion expropriated at P2 a square meter.

Lot No. 49 of Andres and Alfredo Wieneke

This lot was appraised by the commission at P2 a square meter, but the trial judge increased the appraisal to P3 a square meter. Hoskins testified that the market Value of this lot in 1927 was P2 a square meter. The only witness for the defendants was Andres Wieneke, who testified that the market value of the lot in question was from P3 to P6 a square meter, but that the defendants were willing to accept P3 a square meter. The trial judge took into consideration the fact that Hoskins appraised lot No. 48 at P3 a square meter, but it was not proved that lots Nos. 48 and 49 were in the same condition, and the trial judge erred in assuming this to be true. The value of this lot is fixed at P2 a square meter.

"ERROR NO. XI

"The lower court erred in appraising lots Nos. 66, 100, 101, and 102 at P2 a square meter."

Lot No. 66 of Aquilina de la Cruz

This lot was appraised by the commission at P2 a square meter, taking into consideration the consequential damages and benefits of the expropriation. The trial judge fixed the value of the land expropriated at P2 a square meter, but allowed the defendant a further sum of P300 as damages for the destruction of the defendant's fish-pond and fruit trees.

Hoskins testified that the lot in question was low and muddy, and that its market value in 1927 was P1.75 a square meter. The defendant claimed P4 a square meter, and presented various documents evidencing sales of land in that vicinity during the years 1927 and 1928 for prices varying from P3.47 to P5 a square meter, but it was not proved that the lot in question was of the same character as the parcels of land described in the deeds. The very fact that the lot in question was used for a fish pond and zacate field shows that it was low land. It clearly appears that the commission in appraising the portion of land expropriated took into consideration the damages to defendant's fish pond and fruit trees, and we see no reason to disturb the finding of the commission. The value of defendant's lot is therefore fixed at P2 a square meter, and she is not entitled to recover in addition thereto anything for damages to her fish pond or fruit trees.

Lot No. 100 of Vicente Reyes del Rosario and lot No. 101 of Anastacio Dizon

These two lots were appraised by the commission at P2 a square meter, and this appraisal was approved by the trial judge. Hoskins testified that these two lots were low and that their value in 1927 was P1.50 a square meter. The defendants did not present any evidence as to the value of these lots. The commission states in its report that lot No. 100 was assessed for taxation at the rate of P2 a square meter; that it is comparatively low for the most part, and that P2 a square meter would be just compensation. As to lot No. 101 it is stated in the report of the commission that this lot was assessed for taxation at the rate of 80 centavos per square meter, and was in the same condition as lot No. 100. The trial judge based his approval of the appraisal of the commission on the fact that the commissioners had an opportunity to view the lots in question, whereas Hoskins had not had an opportunity to do so. This conclusion of the trial judge is not sustained by the evidence, and it does not appear that the commission was justified in substituting its own opinion as to the value of the land for that of Hoskins. The value of these lots is fixed at P1.50 a square meter.

Lot No. 102 of Alejandro Anareta

This lot was appraised by the commission at P4 a square meter, but this valuation was reduced by the trial judge to P2 a square meter. Hoskins testified that the market value of this lot in 1927 was P1.50 a square meter. The defendant claimed P4 a square meter, and still claims that price, although he did not appeal from the decision of the trial court. Defendant offered evidence as to sales of property in the vicinity where the lot in question is located, but did not prove that those lots were of the same character as the lot in question. The portion of defendant's land that was expropriated contained only 75 square meters. The commission in appraising this lot took into consideration the fact that it was assessed for taxation at P2 a square meter in 1929, and it appears that before the expropriation it was assessed at only 80 centavos a square meter. Defendant's land was not damaged by the expropriation of the small piece of land in question, on the contrary his land was enhanced in value. The value of the land in question is fixed at P1.50 a square meter.

"ERROR NO. XII

"The lower court erred in approving the commissioners' report as to the value of the improvements on lots Nos. 1, 3, 7, 13, 26, 30, 41, 66, 73, and 96."

Under this assignment of error the fiscal maintains that the appraisal of the improvements should be reduced as follows:

Lot No.

Court

Appellant

1

appraised at

P53.00

should be reduced to

P40.00

3

appraised at

51.50

should be reduced to

28.50

7

appraised at

105.50

should be reduced to

81.50

13

appraised at

151.00

should be reduced to

100.00

26

appraised at

230.00

should be reduced to

130.00

30

appraised at

235.00

should be reduced to

200.00

41

appraised at

200.00

should be reduced to

100.00

73

appraised at (a)

450.00

should be reduced to

400.00

(b)

608.00

should be reduced to

500.00

96

appraised at

300.00

should be reduced to

240.00

It appears that the only evidence presented by the plaintiff as to the value of the improvements in question was the expert testimony of Juan Bunuan, an employee of the Bureau of Plant Industry, who has specialized in the study of plants in the Philippine Islands and is in charge of the office in that bureau for the sale of seeds and young trees. He submitted a table by which he attempted to show the value of different kinds of trees according to their size and age. It does not appear that he had examined the fruit trees in question, and we are of the opinion that the commission did not err in refusing to be controlled by his table in fixing the valuation of the trees in question. The value of a fruit tree cannot be determined from its size and age alone. It depends chiefly on what it bears.

Jose Rueda Arias was allowed P235 for the damages to a wall on two sides of lot No. 30, and Felisa Cruz P300 for a house of mixed materials. No reason is adduced by the fiscal in his brief for modifying the decision of the lower court as to these damages.

The decision of the trial judge as to the value of the improvements on the lots mentioned in the twelfth assignment of error is affirmed.

With respect to the improvements on lot No. 66 of Aquilina de la Cruz, we have already held that the value of said improvements was taken into consideration in fixing the value of her land that was expropriated, and that she is not entitled to recover any additional sum for improvements.

"ERROR NO. XIII

"The lower court erred in sentencing the plaintiff to defray the costs of preparing a sketch to show the area expropriated, and to pay the necessary amount for the resulting subdivision and issuance of new certificates of title to the defendants, covering the portions of land not expropriated."

If the land expropriated was already registered under Act No. 496, the owner is entitled to recover in addition to the value of the land taken his expenses for the subdivision and the issuance of a new certificate of title; if the land was not registered, the owner is entitled to recover his costs in obtaining a plan showing the area expropriated; and if the land was not already registered and was brought under the operation of the Cadastral Act, each party should pay his proportionate part of the expenses according to the area expropriated and the portion remaining.

The defendants are entitled to recover legal interest on the value of their property from the time when it was taken by the plaintiff.

Any question as to the cost of subdivision plans or registration or as to the specific date when the land of any given defendant was taken by the plaintiff will be determined by the lower court, as there is no evidence before us that would enable us to do so.

The decision appealed from is modified as hereinabove stated; in all other respects it is affirmed. The plaintiff will pay the costs of the proceedings in the trial court. No costs will be allowed in this court.

Malcolm, Villa-Real, Hull, and Imperial, JJ., concur.

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