

**THE PHILIPPINE RAILWAY COMPANY, PLAINTIFF AND APPELLEE,  
VS. ESTEBAN SOLON AND SEVENTY-TWO OTHERS,  
DEFENDANTS.-COLIN CAMPBELL, APPELLANT.**

*G.R. No. 4939. February 20, 1909*

Ponente: WILLARD, J.

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**WILLARD, J.:**

The plaintiff brought this action in the Court of First Instance of the Province of Cebu for the purpose of condemning certain tracts of land in the city of Cebu which it desired to use for the purposes of its railway. The law authorizing the proceeding is found in the Code of Civil Procedure, sections 241 and following, and Acts Nos. 665, 1258, and 1592. The complaint was filed on the 21st of January, 1907. Among those who appeared and answered was the appellant, Colin Campbell. The property belonging to him, which the company sought to appropriate, was his interest as tenant in a tract of land belonging to the Government, 9,992.82 square meters in extent, together with a house standing thereon and other property belonging to him. In his answer he asked that he be awarded for all the property taken P19,398.42. On the 25th of April, 1907, the court, in accordance with the provisions of section 244 of the Code of Civil Procedure, appointed three commissioners to view the premises and assess the damages. The commissioners received a large amount of evidence, occupying more than 300 pages in the record, viewed the premises; and on the 27th of April, 1908, presented their report, in which they awarded to the appellant, Campbell, P10,745.25.

It is stated in the bill of exceptions that both parties appealed from this report. Such an appeal, however, does not seem to be contemplated by the provisions of the law in force, for it is the duty of the commissioners to make their report and the duty of the judge to pass upon it. A hearing was had in the Court of First Instance upon the report, but no additional evidence was received therein. At such hearing the court reduced the amount allowed to the appellant, Campbell, and awarded him P9,637.75, something more than a thousand pesos less than the amount awarded by the commissioners. Campbell, having moved for a new trial, excepted to the order denying his motion and has brought the case here for review.

1. The first and most important question raised upon the appeal relates to the powers of the judge to deal with the report of the commissioners when it is presented to him. Section 246 of the Code of Civil Procedure is as follows:

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

Whether in any case the court upon the hearing of the report can receive additional evidence as to the value of the property and then change the amount awarded by the commissioners, is a question which we are not called upon

here to decide, for the court below received no additional evidence. (See, however, the case of *The City of Manila vs. Tuason*,<sup>[1]</sup> No. 3367, decided March 23, 1907.)

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

That the award of the commissioners was not palpably insufficient or excessive appears moreover from the evidence presented before them. Immediately upon taking possession of the property the railway company took down the house, removed the materials to a place nearer the center of the city, and there reconstructed it, but not in the same form in which it was before. The commissioners fixed the value of the house at P9,500, and the court at P8,792.50. The witness Chu Po-Co, testifying for the owner, said that the value of the house was a little over P12,000. Another witness for the owner, Rafael de Ocampo, testified that the value of the house was more than P12,000. A third witness, Navarro, testified that it would cost to construct the house P14,126.82. For the company, Pedro Rojo testified that to build the house in the condition in which it was at the time of the hearing would cost P8,750. By Quangko testified that he would construct it as it then was for P6,250. Austin, an employee of the company, testified that it would cost to construct it as it then was P7,050.95.

The court below, in arriving at its valuation, took as the basis therefor a claim made by the owner as to what it cost him to construct it. It may be said that it nowhere appears in the record before us that the owner presented a claim to the effect that the house cost him P9,938, as stated by the court below. He testified at the trial that it cost him more than P10,000. The court then considered the evidence relating to the cost of the various articles which had gone into the construction of the house and found that the cost of some of these articles was less than the amount claimed by the owner. For example, the court said that the owner claimed to have spent P320 for shingles, and the court was of the opinion that he only spent P256; that the owner claimed for the windows and doors P750, when in the opinion of the court he had spent P500 for them, The owner had preserved none of the bills which he had paid for the material purchased with one or two exceptions, and his testimony as to what the materials cost him and as to the amount of the materials was not precise.

Without considering the correctness of the rule adopted by the court for determining the value of the property, it is sufficient to say that the evidence before the commissioners, as to the value of the property taken was contradictory and that their award was not palpably excessive or inadequate. Under such circumstances, we are of the opinion that the court had no right to interfere with it. The law provides, section 243 of the Code of Civil Procedure, that the commissioners shall be judicious and disinterested landowners of the province. It provides, section 244, that evidence may be introduced before them, and that they shall, unless the parties consent to the contrary, go to the premises together and view the property sought to be condemned and its surroundings, and may examine and measure the same. It must have been intended that some effect should be given to their award after such a hearing and examination as is provided for by the statute. The view taken by the court below would practically reduce their powers to the mere mechanical work of taking down the evidence presented before them, for the judgment appealed from must have proceeded upon the basis that the court has the right in every case to disregard the award and form its own opinion upon the evidence presented before the commissioners. In other words, that it tries the case in the same way that it would try any other case pending before it where the evidence

consisted of depositions taken out of court. We can not believe that such was the intention of the legislator. If it had been, commissioners would have been dispensed with and the law would have provided for the trial of these actions in the same way as other actions pending in the Court of First Instance.

Moreover, section 246 provides that the court may set aside the report or recommit it, or appoint new commissioners only for cause shown and it can not be considered that a mere difference of opinion between the court and the commissioners as to what the evidence before them showed the true value of the property to be, constitutes such cause.

This question has frequently been before the courts of the United States in cases of this character, and the law there is well settled. In the case of *Shoemaker vs. The United States* (147 U. S., 282) the Supreme Court of the United States said at page 305:

"In connection with this part of the subject, we may appropriately consider the objection made to the action of the court below in declining to review and pass upon the evidence that had been produced before the commissioners.

"If, as we have said, the court below was right in refusing to restrict the commissioners to a mere consideration of the evidence adduced, then it would seem to follow that the court could not be legitimately asked, in the absence of any exceptions based upon charges of fraud, corruption, or plain mistake on the part of the appraisers, to go into a consideration of the evidence. The court can not bring into review before it the various sources and grounds of judgment upon which the appraisers have proceeded. The attempt to do so would transfer the function of finding the values of the lands from the appraisers to the court. Such a course would have presented a much more serious allegation of error than we find in the objection as made.

"The rule on this subject is so well settled that we shall content ourselves with repeating an apt quotation from *Mills on Eminent Domain*, 246, made in the opinion of the court below: 'An appellate court will not interfere with the report of commissioners to correct the amount of damages except in cases of gross error, showing prejudice or corruption. The commissioners hear the evidence and frequently make their principal evidence out of a view of the premises, and this evidence can not be carried up so as to correct the report as being against the weight of evidence. Hence, for an error in the judgment of commissioners in arriving at the amount of damages there can be no correction, especially where the evidence is conflicting. Commissioners are not bound by the opinions of experts or by the apparent weight of evidence, but may give their own conclusions.'"

In *Braun vs. Metropolitan West Side Elevated R. R. Co.* (166 Ill., 434), the court said at page 436:

"We have carefully considered the evidence relied upon by appellant as showing that this verdict is so inconsistent with the weight of the testimony as that the court below should have set it aside, and this court, for its failure to do so, should reverse the judgment. It has been often decided by this court that in cases of this kind, where the jury have viewed the premises and the evidence is conflicting, we will not interfere with the verdict unless it is so manifestly contrary to the preponderance of the evidence as to indicate misconduct on the part of the jury."

In *the City of St. Louis vs. Brown* (155 Mo., 545), the court said at page 567:

"As to the value of the land taken there was sufficient and satisfactory evidence to sustain the award of the commissioners. On a mere question of value depending on conflicting evidence the circuit courts should hesitate to interfere with the commissioners' finding, although in a proper case it has undoubtedly the right and duty to do so. A board of commissioners is the tribunal provided by our Constitution to do justice in such cases between the city and the citizen. They are selected by the circuit court and should be men of good judgment and honest repute. They have an advantage that the court and even a jury do not have in trying a case, they go upon the land and make a personal observation and study of it and its surroundings, besides they have the benefit of such evidence as parties see fit to bring before them. Assuming, as we must, until the contrary is

shown, that the commissioners have given the subject their best, careful, and conscientious consideration, their finding on a mere question of value is entitled to great weight with the trial judge when he is hearing exceptions to their report."

We hold that the court below committed error in substituting in this case its own opinion as to the value of the property for the opinion of the commissioners as found in their report, and reducing the award.

The appellant, the owner, claims that the damages allowed by the commissioners were insufficient and that the award should be increased. If upon the circumstances of this case the judge below should not have reduced the award, it is apparent that he should not have increased it. Our conclusion is that it was the duty of the court upon the hearing before it to confirm the report.

2. The owner claims that he is entitled to interest from the date when the company took possession of his property. The court allowed him interest only from the date of its judgment. On the 2d day of February, 1907, the court, upon the petition of the plaintiff company, issued an order, authorizing the company to take immediate possession of the property. This it did, taking down the house and removing it to another place as has been before stated. The commissioners did not make their report until more than a year afterward, that is to say, on the 27th of April, 1908. The court did not decide the case until the 16th day of June, 1908.

Our attention has not been called to any Act of the Commission relating to the matter of interest. But that the owner is entitled to interest from the time when the company took possession of the property on the second day of February, 1907, until the decision of the court on the 16th day of June, 1908, we think is clear. The statute requires just compensation to be made to the owner for his property taken, and section 246 above cited requires the court to make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law and to the defendant just compensation for the land so taken. The defendant, the owner, was deprived of the use of his property from the 2d day of February, 1907, until the 19th day of July, 1908. He lost the use of it for this time, and it can not be said that he has received just compensation for it if he is not allowed interest upon the value of the property during that time. In the case of *The Pennsylvania Railroad Co. vs. Cooper* (58 Penn. St., 408), the court said at page 409:

"It can hardly be made a question that the plaintiff below was entitled to recover interest upon the value of his property taken by the company defendants and appropriated for the purposes of their road from the time that it was taken. He is in the position of a vendor of land, who has always been held to have a right to interest on the purchase-money where possession has been delivered to the vendee."

In the case of *Warren vs. First Division of the St. Paul & Pacific Railroad Co.* (21 Minn., 424), the court said at page 427:

"If, therefore, the allowance of interest upon the amount of the assessment shall be necessary to make the compensation just, we have no doubt of authority in the court to make it; and we think that, generally, it is necessary to allow interest from the date of the award to give to the owner just compensation. While the assessed value, if paid at the date taken for the assessment, might be just compensation, it certainly would not be, if payment be delayed, as might happen in many cases, and as did happen in this case, till several years after that time. The difference is the same as between a sale for cash in hand and a sale on time."

In the case of *Philipps vs. The South Park Commissioners* (119 111., 626), the court said at page 645:

"The court allowed interest on the amount decreed Mrs. Philipps, from the 27th day of August, 1870, the time when the commissioners took possession of the land, and this is relied upon as error. Lands can not be taken and appropriated to public use without just compensation is made to the owner; and we think our law of eminent domain requires the payment of the compensation, or a tender, or deposit of the same with the county

treasurer, before possession of the land shall be taken. This seems manifest from section 10 of the Eminent Domain Act, which, in substance, provides that, when the report of the jury is brought in, the court or judge shall make such order as to right and justice shall pertain, ordering that petitioner enter upon such property, and the use of the same, upon payment of full compensation, as ascertained as aforesaid. The payment of the compensation, or the deposit of the same, seems to be a condition precedent to the taking of possession. When, therefore, the possession of the land is taken, the compensation is due; and if due and payable, it, in justice, ought to draw interest from that time."

But it is said that when the company took possession on the 2d day of February, 1907, it deposited with the Insular Treasurer the value of the land and therefore ought not to pay interest on that amount.

The order made on that date was at the request of the company and in accordance with the provisions of section 1 of Act No. 1592, which is as follows:

"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."

The defendant having claimed that his damages would amount to P19,398.42, the company deposited this sum, but it is very evident from the terms of the Act that this deposit was in no sense a payment nor an offer of payment by the company for the land. It simply guaranteed that the plaintiff would pay whatever sum might eventually be awarded to the defendant. The defendant had no right to withdraw this money on the 3d day of February, 1907, nor did he have any right to withdraw it until after the court had acted upon the report of the commissioners and entered its judgment, which it did on the 16th day of June, 1908. We therefore hold that the defendant would not secure just compensation for the property taken unless he received interest on its value from the 2d day of February, 1907 until the 16th day of June, 1908.

It remains to consider what interest the defendant is entitled to from the, last named date. It appears from the record that the company opposed the confirmation of the award. Its objections were so far successful that the court reduced the amount awarded by the commissioners. The owner was compelled to appeal and in his appeal has been so far successful as to reverse the action of the court below. Under these circumstances we think he is entitled to interest on the award until the final determination of this proceeding. What the result would be if he had failed in his appeal, we do not decide. The interest thus allowed will be interest upon the amount awarded by the commissioners from the 2d day of February, 1907, until payment.

3. The court below taxed the costs in the proceeding at P28, ordering that sum to be divided among the 72 defendants. The defendant claims that he is entitled to a separate bill of costs, as if he were the only defendant. Section 249 of the Code of Civil Procedure is as follows :

"The costs in all cases under this chapter relating to eminent domain shall be paid by the plaintiff; but in case the action is carried to the Supreme Court by the owner, the costs in the Supreme Court shall be paid by the owner if the judgment is affirmed."

We consider this proceeding as, in substance, an ordinary action falling within the provisions of part one of the Code of Civil Procedure, and not as a special proceeding falling within the provisions of part two of that code. Section 249 has changed the general rule in regard to costs so that in this action the plaintiff must always pay the costs in the Court of First Instance, and the question is, whether he shall pay more than one bill of costs. The Act allows a company such as the plaintiff to include in one action all the tracts of land which it desires to condemn within any one province. As a general rule the defendants in such an action, so far as they are the owners of separate tracts of land, have no interest in common, and we think that where one defendant appears by himself alone and files an answer relating to a particular tract of land in which he-alone is interested, he is entitled to costs, as if he were the only defendant.

As to the costs in the Supreme Court, we think that the general rule relating to costs here should be followed.

The judgment of the court below is reversed and the case remanded with directions to confirm the report of the commissioners so far as the appellant is concerned, and to enter judgment in his favor for the sum of P10,746.25, with interest thereon at the rate of 6 per cent per annum from the 2d day of February, 1907, and the costs of the Court of First Instance as hereinbefore indicated. No costs will be allowed to either party in this court. So ordered,

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

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[1] Not reported.

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