

THE CITY OF MANILA, PLAINTIFF AND APPELLANT, VS. BALBINA ESTRADA Y SARMIENTO, MINOR AND ONLY HEIRESS OF CONCEPCION SARMIENTO, DECEASED, AND ARISTON ESTRADA, PERSONALLY, AND AS A...

G.R. No. 7749. September 09, 1913

Ponente: TRENT, J.

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TRENT, J.:

A short opinion was handed down in this case on February 18, 1913, and in accordance with the reservation made therein, the court now proceeds to write an extended opinion setting forth the reasons for its judgment in the case.

The city of Manila sought to expropriate an entire parcel of land with its improvements for use in connection with a new market at that time being erected in the district of Paco. A complaint was filed setting forth the necessary allegations, answer joined, and commissioners were appointed, who, after viewing the premises and receiving evidence, and being unable to agree, submitted two reports to the court. The court duly rendered its decision, confirming the majority report as to the improvements, but reducing the price of the land from P20 per square meter, as fixed by the majority report, to P15 per square meter. Motions for a new trial having been made by both parties and denied by the court, both parties appealed from that part of the decision fixing the value of the land at P15 per square meter. The record was therefore elevated to this court for a review of the evidence and assigned errors of the parties. This court held that P10 per square meter was just compensation for the land, and rendered its decision accordingly.

The court justifies such action, first, upon the ground that the great preponderance of the evidence submitted to the commissioners showed that P10 per square meter was just compensation for the land taken, and second, upon the power of the court to revise the report of the commissioners when the amount awarded is grossly inadequate or grossly excessive.

A brief resume of the evidence in regard to the value of the land will first be made. The land was bounded by Calle Herran, the Paco Estero, the market site, and Calle Looban.

The several sessions of the commissioners at which evidence was heard took place between September 19 and October 3, 1911.

George C. Sellner, a real estate agent, testified that he was familiar with real estate values in the city of Manila. He stated that the land in question, fronting as it did on Calles Herran and Looban and the Paco Estero, was worth 60 percent more than other land near by, and placed its value at P10 per square meter. He stated that he had carried on negotiations with regard to a parcel of land situated on the opposite side of the estero and fronting Herran; that he was offering this land for sale at P5.50 per square meter, but that the owner succeeded in obtaining P6 per square meter, and that the sale had been consummated only about thirty days prior to the date of the hearing. The witness stated that this land was of about the same elevation as the parcel sought to be expropriated,

but that it had no improvements, being used for the storage of coal.

Enrique Brias, another real estate man, testified that was a good price for the land. He stated that he was the owner of the land on the opposite side of the estero which had been sold for P6 per square meter about one month prior to the hearing, but that this land was not in such a good commercial location.

Mr. Powell, of the Internal Revenue Bureau, testified that the Estrada land was appraised for taxation at P6 per square meter; that prior to 1911 it had been appraised at about P4 per square meter.

The president of the Municipal Board of the city of Manila testified that a parcel of land on the opposite side of Calle Herran but on the same side of the Paco Estero, owned by one Clarke, had been expropriated by the city in 1908. He stated that commissioners were appointed who duly rendered their report to the court, but as it was accepted by both parties, no further litigation was necessary. In this case it seems that the land desired by the city was part of a parcel fronting on Calle Herran, whose other boundaries were the Paco Estero, some private property, and a small callejon. The portion desired by the city comprised the entire Herran frontage of the owner. The commissioners appraised the total area, consisting of 1,399.03 square meters at P6.50 per square meter. The city desired only 353.21 square meters facing on Calle Herran, and the commissioners therefore found consequential damages to the remainder, due to depriving it of its Herran frontage, to be P4.50 per square meter. These consequential damages were included in the price paid by the city for the land taken, making the apparent price of the 353.21 square meters P7,002.05, or P19.85 per square meter.

To the same effect was the testimony of Judge Camus of the municipal court, who at the time of the Clarke transaction was city attorney.

Ariston Estrada, one of the defendants, testified as follows:

"As to the market value of the land (the subject of the present case), whatever may be its price on the market, in my opinion, by comparing previous sales of land in the same or similar conditions and circumstances, and having in mind the only sale which has been made in twenty years of land equally or similarly situated to this, I believe that it is all that can serve as a standard to ascertain the value in the market of the land in question.

* * * * *

"With reference to the land, I believe I am as well informed as the witnesses for the plaintiff who have testified, and I estimate that the land in question should be worth on the market at this time P25 per square meter for the reason that about P19.85 per square meter was paid for Mr. Clarke's land and this was three years ago; and, on the one hand, property values have increased in the last three years, and, on the other hand, with the opening of the market, property values along Calles Herran and Looban have increased."

From the record it appears that the improvements on the land consisted of a camarin in fairly good condition, appraised at P4,500; a dwelling house in very bad condition, appraised at P1,500; the former being occupied by tenants and the latter by the defendant Estrada and his family. The remaining improvements consisted of a stone wall surrounding the lot, appraised at P1,020, and some trees, appraised at P150.

The majority report of the committee, fixing the value of the land at P20 per square meter, states:

"And lastly, with respect to the value of the land, the evidence is very contradictory. While the evidence of the plaintiff tends to show that the value of the land does not exceed P10 per square meter, that of the defendants, on the contrary, maintains that the value of the land is more than P19.85 per square meter, and it is contended by the defendants that the true market value of the land in question is P25 per square meter."

The lower court, in arriving at its decision to reduce the price of the land to P15, discussed the Clarke transaction

at some length, and concluded as follows:

"The court therefore understands that the price which the plaintiff accepted three years ago for a piece of land less suited for commercial purposes than that in question, without proof that since then the price of land in the place where the tract here considered is situated has fallen, ought to serve as a criterion for fixing the value of the land that is the subject matter of the present expropriation.

* * * * *

"So, the court holds it just and equitable to take as a compromise between the two conflicting majority and minority opinions of the three commissioners the average of the two prices they have fixed per square meter for the land in question, P20 and P10, respectively, fixing upon P15 per square meter."

From this review of the evidence it appears that two disinterested witnesses for the plaintiff corporation testified that the land was worth P10 per square meter, their statements being based upon the prices obtained for land in the open market in the vicinity. The defendant Estrada testified that it was worth P25 per square meter, basing his statement on the price obtained three years previously by the owner of the parcel on the opposite side of Calle Herran of P19.85 per square meter. It also clearly appears that the price fixed in the majority report of the commissioners was based principally upon this same transaction, and that the compromise price fixed by the court was based upon the evidence of this sale and the testimony of the two witnesses for the plaintiff who fixed the price at P10 per square meter.

Attorney for the plaintiff corporation objected to the introduction of all evidence with reference to the Clarke transaction, and so much depending upon it, it is proper to inquire as to its competency and relevancy.

The general rule that the market value of the land taken is the just compensation to which the owner of condemned property is entitled under the law meets with our unqualified approval. Such was our holding in *Manila R. Co. vs. Fabie* (17 Phil. Rep., 206). But as stated in *Packard vs. Bergen Neck Ry. Co.* (54 N. J. L., 553; 25 A., 506) :

"The difficulty is not with the rule, but with its application. For the determination of the market value of land, which is that sum of money which a person, desirous but not compelled to buy and an owner willing but not compelled to sell, would agree on as a price to be given and received therefore, is beyond doubt difficult. The test is logically and legally correct, but it cannot be applied to land with the accuracy with which it can be applied to stocks, bonds, and personal property generally. Still, it is this test which admittedly must be applied, even when the value of the land and the damages are found in separate sums."

It is a very difficult matter to limit the scope of the inquiry as to what the market value of condemned property is. The market value of a piece of land is attained by a consideration of all those facts which make it commercially valuable. Whether evidence considered by those whose duty it is to appraise the land is of that nature is often a very difficult matter to decide. The Supreme Court of the United States, in a carefully worded statement, marks out the scope of the inquiry as follows:

"In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties. The inquiry in such cases must be what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted; that is to say, what is it worth from its availability for valuable uses? * *

* As a general thing, we should say that the compensation to the owner is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business of wants of the community, or such as may be reasonably expected in the immediate future." (98 U. S., 403; 25 L. ed., 206.)

This passage is quoted with approval in the late case of *St. Louis I. M. & S. R. Co. vs. Theodore Maxfield Co.* (94

Ark., 135; 26 L. R. A. (N. S.), 1111; 126 S. W., 83)-a very well considered case.

The supreme court of Missouri has also formulated an exceedingly clear statement of the matter in the Stock Yards case (120 Mo., 541) :

"The market value of the property means its actual value, independent of the location of plaintiff's road thereon, that is, the fair value of the property as between one who wants to purchase and one who wants to sell it; not what could be obtained for it in peculiar circumstances when greater than its fair price could be obtained; not its speculative value; not the value obtained through the necessities of another. Nor, on the other hand, is it to be limited to that price which the property would bring when forced off at auction under the hammer. The question is, if the defendant wanted to sell its property, what could be obtained for it upon the market from parties who wanted to buy and would give its full value." (Approved in Met. Street Ry. Co. vs. Walsh, 197 Mo., 392, 418; 94 S. W., 860.)

These views are practically in accord with Lewis on Eminent Domain (2d ed.), paragraph 478, who states the rule as follows:

"The market value of property is the price which it will bring when it is offered for sale by one who desires, but is not obliged to sell it, and is bought by one who is under no necessity of having it. In estimating its value all the capabilities of the property, and all the uses to which it may be applied or for which it is adapted, are to be considered, and not merely the condition it is in at the time and the use to which it is then applied by the owner. It is not a question of the value of the property to the owner. Nor can the damages be enhanced by his unwillingness to sell. On the other hand, the damages cannot be measured by the value of the property to the party condemning it, nor by its need of the particular property. All the facts as to the condition of the property and its surroundings, its improvements and capabilities, may be shown and considered in estimating its value." (Approved in Seaboard Air Line vs. Chamblin, 108 Va., 42.)

In the practical application of this doctrine, the courts have been obliged to reject various kinds of evidence which the partisan zeal of the one side has attempted to introduce in order to swell the measure of damages, and to approve evidence which the other side has attempted to discredit in order to reduce the amount to be realized. Three such questions present themselves in this case.

First, testimony as to mere offers for the property desired or for contiguous property is not admissible. Upon this point we quote from the case of Keller vs. Paine (34 Hun, 167):

"Its value depends upon too many circumstances. If evidence of offers is to be received it will be important to know whether the offer was made in good faith, by a man of good judgment, acquainted with the value of the article and of sufficient ability to pay; also whether the offer was cash, for credit, in exchange, and whether made with reference to the market value of the article; or to supply a particular need or to gratify a fancy. Private offers can be multiplied to any extent for the purposes of a cause, and the bad faith in which they were made would be difficult to prove. The reception of evidence of private offers to sell or purchase stands upon an entirely different footing from evidence of actual sales between individuals or by public auction, and also upon a different footing from bids made at auction sales. The reception of this class of evidence would multiply the issues upon questions of damages to an extent not to be tolerated by courts aiming to practically administer justice between litigants." (As quoted with approval in Yellowstone Park R. R. Co. vs. Bridger Coal Co., 34 Mont., 545.)

In the present case, the defendant Estrada testified that upon learning that the property which was the subject of the present litigation was to be condemned, he offered to pay a real estate agent P15 per square meter for a piece of land situated in the locality with relatively similar commercial location. This was improper evidence and should not have been considered by the commissioners. (See also Sherlock vs. Chicago B. & Q. R. Co., 130 Ill., 403; 22 N. E., 844; Winnisimmet Co. vs. Grueby, 111 Mass., 543; Montclair Ry. Co. vs. Benson, 36 N. J. L.,

557.)

The second point raised by the evidence taken in the present case is the admission of testimony relative to real estate transactions in the vicinity of the land desired. The rule which admits such evidence meets with universal approval, but with certain reservations.

In *Aledo Terminal Ry. Co. vs. Butler* (246 111., 406; 92 N. E., 909) the court said:

"Evidence of voluntary sales of other lands in the vicinity and similarly situated is admissible in evidence to aid in estimating the value of the tract sought to be condemned, but the value of such testimony depends upon the similarity of the land to that in question and the time when such sales were made and the distance such lands are from those the value of which is the subject of inquiry."

The supreme court of Massachusetts, in *Fourth National Bank vs. Com*, (212 Mass., 66; 98 N. E., 86), affirms the rule as follows:

"It long has been settled, that in the assessment of damages where lands are acquired by eminent domain evidence is admissible of the price received from sales of land similar in character, and situated in the vicinity, if the transactions are not so remote in point of time that a fair comparison practically is impossible."

In *Hewitt vs. Price* (204 Mo., 31) it was said:

"It is sufficient to say upon this proposition that the law is well settled in this State upon that subject, and while the value or selling price of similar property may be taken into consideration in determining the value of the piece of property in litigation, it is equally true that the location and character of such property should be similar and the sales of such other property should at least be reasonably near in point of time to the time at which the inquiry of the value of the property in dispute is directed."

In *Laing vs. United New Jersey R. R. & C. Co.* (54 N. J. L., 576; 33 Am. St. Rep., 682; 25 A., 409) it was said:

"Generally in this and other States evidence of sales of land in the neighborhood is competent on an inquiry as to the value of land, and if the purchases or sales were made by the party against whom the evidence was offered it might stand as an admission. But such testimony is received only upon the idea that there is substantial similarity between the properties. The practice does not extend, and the rule should not be applied, to cases where the conditions are so dissimilar as not easily to admit of reasonable comparison, and much must be left to the discretion of the trial judge in the determination of the preliminary question whether the conditions are fairly comparable."

In an earlier case, and which will be referred to again upon another question, the supreme court of Illinois stated the rule as follows:

"The theory upon which evidence of sales of other similar property in the neighborhood, at about the same time, is held to be admissible is that it tends to show the fair market value of the property sought to be condemned. And it cannot be doubted that such sales, when made in a free and open market, where a fair opportunity for competition has existed, become material and often very important factors in determining the value of the particular property in question." (*Peoria Gas Light Co. vs. Peoria Term. Ry. Co.*, 146 Ill., 372; 21 L. R. A., 373; 34 N. E., 550.)

Even in those States where direct evidence of particular sales is not allowed, such questions may be directed to witnesses on cross-examination to test their credibility. This is the position taken by the supreme court of Pennsylvania in the late cases of *Rea vs. Pittsburg, etc., R. R. Co.* (229 Pa., 106) and *Brown vs. City of Scranton* (231 Pa., 593; 80 A., 1113), See also *Oregon R. & N. Co. vs. Eastlack* (54 Ore., 196; 102 Pac, 1011) where this somewhat technical difference is set forth.

Evidence of other sales is competent if the character of such parcels as sites for business purposes, dwellings, or for whatever other use which enhances the pecuniary value of the condemned land is sufficiently similar to the latter that it may be reasonably assumed that the price of the condemned land would be approximately near the price brought by the parcels sold. The value of such evidence, of course, diminishes as the differences between the property sold and the condemned land increase. The property must be in the immediate neighborhood, that is, in the zone of commercial activity with which the condemned property is identified, and the sales must be sufficiently coeval with the date of the condemnation proceedings as to exclude general increases or decreases in property values due to changed Commercial conditions in the vicinity. No two estates are ever exactly alike, and as the differences between parcels sold and the land condemned must necessarily be taken into consideration in comparing values, we think it much better that those differences should be shown as part of the evidence of such sales, as is the practice in Iowa. (*Town of Cherokee vs. S. C. & I. F. Town Lot and Land Co.*, 52 Iowa, 279, 3 N. W., 42.) And where these differences are so great that the sales in question can form no reliable standard for comparison, such evidence should not be admitted. (*Presbrey vs. Old Colony & Newport R. Co.*, 103 Mass., 1.)

The testimony as to the sale of a parcel of land on the opposite side of the estero from the condemned land at P6 per square meter we think was properly admitted, and should have been given much greater weight by the commissioners and the court below. This was a sale in the open market, just one month prior to the time of the hearing before the commissioners. It was located on the same street, Calle Herran, and on the same estero. The difference between the two parcels as to location was that the condemned property also had a frontage on Calle Looban and was on the same side of the estero and immediately in front of the market site. It is true that the condemned land had improvements upon it while the parcel sold was vacant land. But it is also true that the values of these improvements were estimated as separate and distinct items, and the value of the land was estimated without regard to the improvements upon it. A sale of vacant land is evidence of the value of neighboring land. (*O'Malley vs. Com.*, 182 Mass., 196; 65 N. E., 30.) Basing their estimate of the value of the condemned land upon the price obtained for the parcel mentioned, and estimating the more favored location of the condemned land as being worth 60 per cent more than the land on the opposite side of the estero, Sellner and Brias arrived at the conclusion that P10 per square meter (a difference of more than 66 per cent) was a fair price for the land condemned. These witnesses were professional real estate agents, both had been active in the vicinity at about the time they testified before the commissioners, and were therefore peculiarly qualified to appraise the land in question. We are inclined to agree with the opinion expressed in the case of *1.1. & M. R. Co. vs. Humiston* (208 111., 100; 69 N. E., 880), where it is said:

"The fact of sales is not always the only factor in determining the weight of the testimony of a witness as to value. A witness may, in forming his opinion, consider the uses and capabilities of the property, as well as the prices at which like property in the neighborhood has been sold. He may also base his opinion of value upon his knowledge or observation of the growth and development of towns and cities, a general knowledge of trade and business, rental value, the interest which the land would pay upon an investment, its productiveness, ease of cultivation, its situation in a particular community, and other elements."

These parcels were in the same neighborhood and their respective locations and surroundings were, with the differences above named, practically the same. The price which the parcel sold by Brias brought was therefore of great importance as a basis for estimating the value of the condemned land.

The next question of evidence, and the most important to this case, is the admissibility of evidence showing prices paid for neighboring land under eminent domain proceedings. Is this class of evidence admissible? The authorities almost with one accord reply emphatically, No. The rule is so universal that it seems sufficient to quote from only one or two authorities. *Lewis on Eminent Domain* (par. 447) says:

"What the party condemning has paid for other property is incompetent. Such sales are not a fair criterion of value, for the reason that they are in the nature of a compromise. * * * The fear of one party or the other to take the risk of legal proceedings ordinarily results in the one party paying more or the other party taking less than is considered to be the fair market value of the property. For these reasons, such sales would not seem to be competent evidence of value in any case, whether in a proceeding by the same condemning party or otherwise."

In the case of *Peoria Gas Light Co. vs. Peoria Term. Ry. Co.* (146 111., 372), from which we quoted above sustaining the rule that sales of property in the vicinity are admissible as evidence, it was said:

"But it seems very clear that to have that tendency, they (sales of adjacent land) must have been made under circumstances where they are not compulsory, and where the vendor is not compelled to sell at all events, but is at liberty to invite competition among those desiring to become purchasers. Accordingly among the various decisions in this and other States to which our attention has been called or which our own researches have discovered, we find none in which the price paid at a forced or compulsory sale has been admitted as competent evidence of value."

This case is particularly valuable for its review of the authorities upon this point. Other late cases sustaining the rule are: *U. S. vs. Beaty* (198 Fed. Rep., 284); *City of San Luis Obispo vs. Brizzolara* (100 Cal., 434; 34 P., 1083); *C. & W. I. R. R. Co. vs. Heidenreich* (254 111., 231; 98 N. E., 567); *Howe vs. Howard* (158 Mass., 278); *Seaboard Air Line vs. Chamblin* (108 Va., 42); *O'Day vs. Meyers* (147 Wis., 549; 133 N. W., 605).

It is to be observed that this rule excluding evidence of prices obtained for neighboring land under eminent domain proceedings is in the nature of an exception to the rule that sales of such land may be offered in evidence, and that, speaking briefly, the underlying reason is that they are not prices obtained "by one who desires but is not obliged to sell it, and is bought by one who is under no necessity for having it."

The objection of the plaintiff to the introduction of evidence showing what Clarke had obtained for his land condemned by the city in 1908 was well taken. The testimony of Estrada, based, as he himself admits (see excerpt of his testimony above), upon that transaction, was valueless, and the commissioners and the lower court erred in using it as a basis for estimating the value of the condemned land.

But, carrying this discussion perhaps one step further than is really necessary, we desire to say that even were evidence of the Clarke transaction admissible in the present case, the use made of the facts of that case by the witness Estrada, the commissioners, and the court itself, was clearly erroneous. As was stated above, the apparent price of P19.85 for the land taken by the city was in reality made up of P6.50 per square meter for the land itself and consequential damages to the remaining portion of Clarke's land at the rate of P4.50 per square meter.

"The damage or injury to the remainder of the land on account of the construction of the railroad is in effect the actual taking of that much of the remainder of the land, for the diminished market value of which the owner is entitled to full compensation." (*St. Louis I. M. & S. R. Co. vs. Theodore Maxfield Co.*, 94 Ark., 135; 26 L. R. A. (N. St.), 1111; 126 S. W., 83.)

"The value of the property taken and the damages to the remainder of the property are two distinct and separate things." (*Louisiana Ry. & Nav. Co. vs. Morere*, 116 La., 997; 41 So., 236.)

There were no consequential damages to the defendant in the present case for the reason that his entire holding was taken. The market value of the land taken from Clarke did not include the consequential damages to the remainder. The deed of transfer (Exhibit 1) was obviously ambiguous when it stated "that in consideration of the sum of P7,002.05 which the city of Manila has offered to pay me for the said parcel of land for a sewer pumping station," This sum included the market value of the land taken and something more—the consequential damages to

1,045.82 square meters of land remaining at P4,50 per square meter. The deed so read merely for convenience and brevity. It was written for the purpose of transferring the land taken and was not intended to be a record of the expropriation proceedings which culminated in its execution. It was satisfactorily proven in the present case that the figures shown in the deed were made up in the manner we have already described, and manifestly P19.85 is merely a fictitious value for the land taken, far beyond its true value.

We have now eliminated the testimony of the defendant Estrada of his offer to pay P15 per square meter for other land as well situated as that condemned; and all evidence of the Clarke transaction in 1908. This leaves as the only evidence of record as to the value of the condemned land the testimony of Sellner and Brias, based upon the sale of an adjacent parcel of land, which evidence we have approved as being relevant, and the testimony of Mr. Powell to the effect that the land was appraised for taxation at P6 per square meter, which was also relevant.

The next question which it is necessary to consider is the view of the premises made by the commissioners. What is the purpose of this view? An exhaustive search of the authorities has been made upon this point, and we have come to the conclusion that some of the statements made in the earlier decisions upon the subject are not sound law.

"They view the premises, and are supposed to exercise their own judgment to some extent, irrespective of evidence." (Virginia and Truckee R. Co. vs. Henry, 8 Nev., 165.)

"The testimony of witnesses as to value * * * although entitled to due consideration, is not controlling1." (City of St. Louis vs. Lanigan, 97 Mo., 175; 10 S. W., 475.)

"They are to be guided largely by their own judgment, as they view the premises." (City of Kingston vs. Terry, 53 N. Y. S., 652.)

"They may go and view the premises and upon the knowledge thus acquired base their award." (Stevens vs. Railroad Co., 8 N. Y. S., 707.)

"That the commissioners had a right to act upon information derived in part from a personal view of the premises cannot be questioned." (In re certain lands in the Twelfth Ward, 68 N. Y. S., 965.)

"They are not bound by the testimony of either of these experts, and may act upon their own personal view." (In re opening Trinity Ave., 71 N. Y. S., 24.)

"Doubtless, in a proceeding of this kind, the commissioners may act on their own judgment, disregarding oral testimony." (Waterford E. Light, Heat & Power Co. vs. Reed, 94 N. Y. S., 551.)

All of these statements, while made in cases where there was a conflict of evidence, and wherein the commissioners or jury found damages within the estimates made by witnesses, if taken at their face value would allow commissioners or special juries to assess damages at any sum they pleased. The true rule, as laid down in the more recent cases is that the view of the premises is made for the purpose of better enabling the appraisers to understand the evidence presented by the parties, and giving it its proper weight. The supreme court of Colorado in substance supports this principle in *Denver Co. vs. Howe* (49 Colo., 256; 112 P., 779):

"The jury viewed the premises and were better able to judge of the number of acres in each, as well as other conditions affecting the land. The facts ascertained by the view of the premises are not in the record, whether they were regarded as so much additional evidence, or were used to better understand and apply the evidence adduced at the trial. Keeping in view the evidence relating to the special value of the building site, the value of improvements and of the ground, it will be found that the verdict is within and supported by the values as testified to, and these values, as fixed by the several witnesses, represented to each the market value, as conceded by appellants. The verdict is supported by the evidence of market value and on that ground would

have to be sustained if the matter complained of in the instruction had been entirely omitted."

In a clear statement of the rule, the supreme court of Pennsylvania says (*Gorgas vs. Railroad Co.*, 144 Pa., 1; 22 A., 715): "A view may sometimes be of the highest importance, where there is a conflict of testimony. It may enable the jurors to see on which side the truth lies. And if the witnesses on the one side or the other have testified to a state of facts which exists only in their imagination, as to the location of the property, the manner in which it is cut by the road, the character of the improvements, or any other physical fact bearing upon the case, they surely cannot be expected to ignore the evidence of their senses, and give weight to testimony which their view shows to be false. * * * The true rule, in such cases, is believed to be that the jury in estimating the damages shall consider the testimony as given by the witnesses, in connection with the facts as they appear upon the view; and upon the whole case, as thus presented, ascertain the difference between the market value of the property immediately before and immediately after the land was taken. This difference is the proper measure of the damages."

In *Close vs. Samm* (27 Iowa, 503) it was said: "The question then arises as to the purpose and intent of this statute. It seems to us that it was to enable the jury, by the view of the premises or place, to better understand and comprehend the testimony of the witnesses respecting the same, and thereby the more intelligently to apply the testimony to the issues on trial before them, and not to make them silent witnesses in the case, burdened with testimony unknown to both parties, and in respect to which no opportunity for cross-examination or correction of error, if any, could be afforded either party. If they are thus permitted to include their personal examination, how could a court ever properly set aside their verdict as being against the evidence, or even refuse to set it aside without knowing the facts ascertained by such personal examination by the jury? It is a general rule, certainly, if not universal, that the jury must base their verdict upon the evidence delivered to them in open court, and they may not take into consideration facts known to them personally, but outside of the evidence produced before them in court. If a party would avail himself of the facts known to a juror, he must have him sworn and examined as other witnesses." (Approved in the late case of *Guinn vs. Railway Co.*, 131 Iowa, 680; 109 N. W., 209.)

The doctrine finds favor in Kansas. In *C. K. & W. R. Co. vs. Mouriquand* (45 Kan., 170), the court approved of the practice of instructing the jury that their view of the premises was to be used in determining the value of conflicting testimony, saying: "Had the jury disregarded all the sworn evidence, and returned a verdict upon their own view of the premises, then it might be said that the evidence which the jurors acquired from making the view had been elevated to the character of exclusive and predominating evidence. This is not allowable. The evidence of the witnesses introduced in the court on the part of the landowner supports fully the verdict. If the verdict was not supported by substantial testimony given by witnesses sworn upon the trial, we would set it aside, but as the jury only took into consideration the result of their view of the premises, in connection with the sworn evidence produced before them, to determine between conflicting evidence, the instruction was not so erroneous as to require a new trial."

A very clear statement of it is made by Dyer, J., charging a jury, in *Laflin vs. Chicago W. & N. R. Co.* (33 Fed. Rep., 415): "You have been permitted to view the premises in question. The object of this view was to acquaint you with the physical situation, condition, and surroundings of the premises, and to enable you better to understand the evidence on the trial. The knowledge which you acquired by the view may be used by you in determining the weight of conflicting testimony respecting value and damage, but no farther. Your final conclusion must rest on the evidence here adduced."

In *Postal Telegraph-Cable Co. vs. Peyton* (124 Ga., 746; 52 S. E., 803; 3 L. R. A. (N. S.), 333) it was said: "A jury cannot be left to roam without any evidence in the ascertainment and assessment of damages. The damages which the law allows to be assessed in favor of landowners whose property has been taken or damaged under the right of eminent domain are purely compensatory. The land actually appropriated by the telegraph company amounted to

only a fraction of an acre; and while it appeared that the construction and maintenance of the telegraph line would cause consequential damages to the plaintiff, no proof was offered from which any fair and reasonable estimate of the amount of damages thereby sustained could be made. The jury should have been supplied with the data necessary in arriving at such an estimate. In the absence of this essential proof, a verdict many times in excess of the highest proved value of the land actually taken must necessarily be deemed excessive."

The question has often been up in the State of Illinois, and the rule has been clearly stated there in a number of cases. In *Sexton vs. Union Stock Yard Co.* (200 Ill., 244; 65 N. E., 638), a leading case, it was said: "The evidence consisted most largely of opinions of values entertained by the different witnesses. Their judgment varied widely and their opinions were likewise variant. The amount allowed, though much less than the estimates of the witnesses produced in appellant's behalf, is larger than that of the witnesses produced by the appellee company. We cannot know the effect which was produced on the minds of the jurors by the actual inspection of the premises. The rule in such cases is not to disturb a verdict, if it is within the range of the testimony, unless we can clearly see that injustice has been done and that passion and prejudice influenced the action of the jury."

In the very recent case of *South Park Comrs. vs. Ayer* (245 Ill., 402; 92 N. E., 274) it was said: "The jury view the premises, and the law is well settled in this State that in a condemnation proceeding, where the jury have viewed the premises and where the evidence is conflicting, and where the amount is within the range of value as testified to on the trial, and does not appear to have been the result of prejudice, passion, undue influence, or other improper cause, the verdict will not be disturbed. (Citing cases.) It is clear the amount fixed by the jury in this case was well within the range of the evidence, which was conflicting, and the verdict should not be set aside unless it appears it was brought about by some improper ruling of the court upon the trial."

The rule is also stated in *Lanquist vs. City of Chicago* (200 Ill., 69; 65 N. E., 681) ; in *I. I. & M. R. Co. vs. Humiston* (208 Ill., 100; 69 N. E., 880); and in *G. & S. R. R. Co. vs. Herman* (206 Ill., 34; 69 N. E., 36).

In New York, where the question has doubtless been raised more often than anywhere else, the late cases illustrate the rule perhaps the most clearly.

The appellate division, supreme court, in *In re Titus Street in City of New York* (123 N. Y. S., 1018), where it appeared that the city's witnesses testified that the property was worth \$9,531 and the commissioners awarded \$2,000 less, said: "We do not think this is meeting the requirements of the law; we do not believe that it is within the province of the commissioners to arbitrarily set up their own opinion against that of the witnesses called by the city, and to award damages largely below the figure at which the moving party is committed, without something appearing in the record to justify such action. When a party comes into court and makes an admission against his interest, no court or judicial tribunal is justified in assuming that the admission is not true, without at least pointing out the reason for discrediting it; it carries with it the presumption of truth, and this presumption is not to be overcome by the mere fact that the commissioners might themselves have reached a different conclusion upon the viewing of the premises. * * * This view of the commissioners, it seems to us, is for the purpose of enabling the commissioners to give proper weight and effect to the evidence before them, and it might justify them in giving larger damages than some of the witnesses thought proper, or even less than some of them declared to be sustained. But where the evidence produced by the moving party in a proceeding for taking property for public purposes fixes a sum, without any disagreement in the testimony on that side, we are of the opinion that the cases do not justify a holding that the commissioners are authorized to ignore such testimony and to substitute their own opinion in such a manner as to preclude the supreme court from reviewing the determination. That is not in harmony with that due process of law which is always demanded where rights of property are involved, and would make it possible for a corrupt commission to entirely disregard the rights of the individual to the undisturbed enjoyment of his property or its equivalent."

From these authorities, and keeping in mind the local law on the subject, we think the correct rule to be that, if the testimony of value and damages is conflicting, the commissioners may resort to their knowledge of the elements which affect the assessment and which were obtained from a view of the premises, in order to determine the relative weight of conflicting testimony, but their award must be supported by the evidence adduced at their hearings and made of record or it cannot stand; or, in other words, the view is intended solely for the purpose of better understanding the evidence submitted. To allow the commissioners to make up their judgment on their own individual knowledge of disputed facts material to the case, or upon their private opinions, would be most dangerous and unjust. It would deprive the losing party of the right of cross-examination and the benefit of all the tests of credibility which the law affords. It would make each commissioner the absolute judge of the accuracy and value of his own knowledge or opinions and compel the court to affirm the report on the facts when all of such facts were not before it. The evidence of such knowledge or of the grounds of such opinions could not be preserved in a bill of exceptions or questioned upon appeal.

In those cases where the testimony as to value and damages is conflicting, the commissioners should always set forth in full their reasons for accepting the testimony of certain witnesses and rejecting that of others, especially in those cases where a view of the premises has been made.

The commissioners, being disinterested landowners of the province, selected by the court for their ability to arrive at a judicious decision in the assessment of damages, their report is entitled to greater weight than that of an ordinary trier of facts. A mere numerical superiority of the witnesses on the one side or the other should not be sufficient to overturn the decision arrived at by the commissioners, as such witnesses are not required to be either landowners or judicious and disinterested parties, as are the commissioners. The weight to be given to the testimony of a witness might be considerable or it might be almost negligible, according to his standing in the community and his ability and experience in real estate values. But where experts fixed the value of the property, the lowest estimate being \$5,533 and the highest \$16,000, and the commissioners allowed only \$750, the court held that the award was inadequate. (*In re Metropolitan EL Ry. Co.*, 27 N. Y. S., 756.) And where a lessee of a building was allowed damages in an extravagant sum for his unexpired lease, when compared with the allowance made to the owner of the property, the award was set aside. (*In re Manhattan Loop No. 1*, 135 N. Y. S., 153). In *Palmer vs. Harris County* (29 Tex. Civ. App., 340, 69 S. W., 229) the court said:

"It may be that the jury were influenced by the idea that it might not have been necessary to use all of the tract sought to be condemned for the construction of the ditch, but the proceeding was to condemn the entire tract, and so far as presented by the record the value of the land might be so affected by the construction of the ditch as to destroy its use by the appellant for any purpose. * * * The verdict is so manifestly against the great preponderance of the evidence that we deem it our duty to set it aside."

Calor Oil & Gas Co. vs. Withers (141 Ky., 489; 133 S. W., 210) was an action to condemn a strip of land 27 feet wide and 434 feet long for a pipe line, the said strip lying wholly within a railroad right of way. The commissioners appointed to assess the damages fixed them at \$16.51. Upon appeal, the damages were assessed at \$750, which was held by the supreme court to be flagrantly excessive and was set aside. In *Mutual Union Telegraph Co. vs. Katkamp* (103 Ill., 420) it appeared that telegraph poles were to be set along the line of a railroad right of way, 1 foot from such right of way line, so that there would be eleven poles on defendant's land. The defendant himself testified that his land was worth \$60 per acre, and that the damage done would be about \$10 per pole. Two other witnesses testified that \$10 per pole would be the amount of defendant's damage. Of three witnesses for the plaintiff, one testified that the damage would be 50 cents and two that it would be \$1 per pole. As only a very small fraction of an acre of defendant's land would be taken, a verdict of \$38.50 was held to be manifestly against the weight of evidence and the judgment was reversed.

The report of the commissioners has also been set aside because a wrong principle of assessing the damages was used. Thus, in *Waterford E. Light, Heat & Power Co. vs. Reed* (94 N. Y. S., 551), the award was set aside because counsel for the plaintiff had represented to the commissioners that the plaintiff was only acquiring the right of flowage in respect to the property in question and that the defendants, by reason of the execution of a deed, had lost all but a nominal interest in the question of damages, both of which theories were untrue, and which resulted in only nominal damages being awarded to the defendants. In the matter of *Gilroy* (85 Hun, 424; 32 N. Y. S., 891) it appeared that the commissioners erroneously refused to take into consideration the fact that the property was available for use in connection with the water supply of the city of New York, in estimating the value of the property, and the report was for that reason set aside as allowing insufficient damages. No allowance having been made for consequential damages, the report of the commissioners was set aside. (*Williamson vs. Read*, 106 Va., 453; 56 S. E., 174.) And where a deed was so construed as embracing more land than it actually did embrace, resulting in excessive damages being awarded, the report was set aside. (*Morris & Essex R. Co. vs. Bonnell*, 34 N. J. L., 474.) The report has also been set aside for refusal to consider competent evidence. (*State vs. Shuffield & Thompsonville Bridge Co.*, 82 Conn., 460; 74 A., 775.)

We come now to a consideration of the amount fixed upon by this court of P10 per square meter for the condemned land. We have already referred to the testimony of the two real estate agents, Brias and Sellner, which was based upon a sale of similarly situated land made only thirty days previous to the date of the hearing; and the assessment of the property for taxation, at P6 per square meter. This was the evidence upon which the dissenting commissioner predicated his appraisal of the land, arriving at the same figure as did this Supreme Court of P10 per square meter. There is a considerable difference between this valuation and P25 per square meter, as fixed by Estrada, or of the price fixed by the majority report of the commissioners of P20 per square meter. It is to be noted that no witnesses other than Estrada were called who could confirm the higher valuation or even testify to an intermediate price. The price of P10 per square meter is 66 per cent greater than that obtained for land on the opposite side of the estero, and this difference would seem amply sufficient to compensate for the more favored location of the condemned land. That P10 per square meter is a just compensation is shown by a great preponderance of the evidence.

"Compensation" means an equivalent for the value of the land (property) taken. Anything beyond that is more and anything short of that is less than compensation. To compensate is to render something which is equal to that taken or received. The word "just" is used to intensify the meaning of the word "compensation;" to convey the idea that the equivalent to be rendered for the property taken shall be real, substantial, full, ample. "Just compensation," therefore, as used in section 246 of the Code of Civil Procedure, means a fair and full equivalent for the loss sustained.

"The exercise of the power being necessary for the public good, and all property being held subject to its exercise when, and as the public good requires it, it would be unjust to the public that it should be required to pay the owner more than a fair indemnity for such loss. To arrive at this fair indemnity, the interests of the public and of the owner and all the circumstances of the particular appropriation should be taken into consideration." (2 Lewis on Em. Dora., § 462.)

The compensation must be just to the public as well as to the owners. (*Searl vs. School District*, 133 U. S., 553; 33 L. ed., 740.) Section 244 of our code says that:

"The commissioners shall assess the value of property taken and used, and shall also assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owners."

"To assess" is to perform a judicial act. The commissioners power is limited to assessing the value and to

determining the amount of the damages. There it stops; they can go no further. The value and damages awarded must be a just compensation and no more and no less. But in fixing these amounts, the commissioners are not to act ad libitum. They are to discharge the trust reposed in them according to well established rules and form their judgment upon correct legal principles. To deny this is to place them where no one else in this country is placed: Above the law and beyond accountability.

This court, after an examination of the evidence, found that the awards as fixed by the majority of the commissioners and the trial court were grossly excessive; that a just compensation for the land taken was P10 per square meter, and, in a short opinion, rendered judgment accordingly. It was insisted that to so decide this case would be in conflict with former adjudicated cases by this court. It now becomes necessary to review these cases.

In *City of Manila vs. Tuason et al.* (R. G. No. 3367), decided March 23, 1907 (unreported), the Court of First Instance modified the report of the commissioners as to some of the items and confirmed it as to others. On appeal, the Supreme Court remanded the cause, apparently for the reason that the evidence taken by the commissioners and the lower court was not before it, and perhaps also because the commissioners adopted a wrong principle of assessing damages.

In *Manila Railroad Co. vs. Fabie* (17 Phil. Rep., 206) the majority report of the commissioners appraised the land at P56,337.18, while a dissenting commissioner estimated it at P27,415.92. The Court of First Instance, after taking additional evidence upon the consequential benefits to the remainder of defendants' land by the construction of the railroad, and also as to the rental value of various pieces of land in the locality, fixed the value of the land at the sum estimated by the dissenting commissioner. The defendants appealed to this court. This court remarked that the only evidence tending to support the majority report of the commissioners consisted of deeds of transfer of real estate between parties in that community showing the prices paid by the vendees in such conveyances. It was held that without its being shown that such transfers had been made in the ordinary course of business and competition, and that the prices therein stated were not fictitious, such deeds were incompetent as evidence of the value of the condemned land. As to the action of the court in fixing the price of the land at P27,415.92, the court said:

"Conceding, without deciding, that he also had the right to formulate an opinion of his own as to the value of the land in question, nevertheless, if he formulate such an opinion, he must base it upon competent evidence. The difficulty with the case is that it affirmatively appears from the record on appeal that there is an entire absence of competent evidence to support the finding either of the commissioners or of the court, even if the court had a right to make a finding of his own at all under the circumstances."

In *Manila Railroad Co. vs. Attorney-General* (22 Phil. Rep., 192) the only question raised was the value of certain improvements on the condemned portion of an hacienda, such improvements consisting mainly of plants and trees and belonging to a lessee of the premises. The total damages claimed were P24,126.50. The majority report of the commission allowed P19,478, which amount was reduced by the Court of First Instance to P16,778. The plaintiff company, upon appeal to this court, alleged that the damages allowed were grossly excessive and that the amount allowed by the commissioners should have been reduced by at least P17,000; while the defendant urged that the damages as shown by the record were much greater than those allowed, either by the commissioners or by the court.

"The only ground upon which the plaintiff company bases its contention that the valuations are excessive is the minority report of one of the commissioners. The values assigned to some of the improvements may be excessive but we are not prepared to say that such is the case. Certainly there is no evidence in the record which would justify us in holding these values to be grossly excessive. The commissioners in their report go into rather minute detail as to the reasons for the conclusions reached and the valuations fixed for the various

items included therein. There was sufficient evidence before the commissioners to support the valuations fixed by them except only those later modified by the court below. The trial court was of opinion that the price of P2 each which was fixed for the orange trees (naranjitos) was excessive, and this was reduced to P1.50 for each tree; this on the ground that the evidence discloses that these trees were comparatively young at the time of the expropriation, and that the value fixed by the majority report of the commissioners was that of full-grown or nearly full-grown trees. We are of opinion that this reduction was just and reasonable. Aside from the evidence taken into consideration by the trial judge we find no evidence in the record in support of the contention of the railroad plaintiff that the valuations fixed in the majority report of the commissioners and by the trial court are grossly excessive, and plaintiff company having wholly failed to offer evidence in support of its allegations in this regard when the opportunity so to do was provided in accordance with law, it has no standing in this court to demand a new trial based on its unsupported allegations of grossly excessive valuation of the property by the commissioners and the court below."

This court affirmed the finding of damages made by the trial court with the exception of an item for damages caused by fire to improvements on lands adjoining those condemned, which was held not to be a proper matter to be considered in condemnation proceedings. The court here approved of the action of the Court of First Instance in reducing the amount of damages fixed by the commissioners as to the value of the young orange trees on the strength of the evidence of record.

In *Manila Railroad Company vs. Caligsihan* (R. G. No. 7932), decided March 25, 1913 (unreported), it appears that the lower court approved in toto the report of the commissioners. On appeal, this Supreme Court reversed the lower court and remanded the case with orders to appoint new commissioners, saying:

"Under the evidence in this case the award is excessive. Section 246 of the Code of Civil Procedure giving to the court the power to 'make such final order and judgment as shall secure to the party the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken,' we exercise that right in this case for the purpose of preventing the defendants from obtaining that which would be more than 'just compensation' under all the evidence of the case.

"The judgment is reversed and the cause is remanded, with instructions to the lower court to appoint a new commission and to proceed from that point de novo."

We will now examine the case (*Philippine Railway Co. vs. Solon*, 13 Phil. Rep., 34) relied upon to support the proposition that the courts should not interfere with the report of the commissioners to correct the amount of damages except in cases of gross error, showing prejudice or corruption.

In that case the property belonging to the appellant which the company sought to appropriate was his interest as tenant in a tract of land belonging to the Government, together with a house standing thereon and other property belonging to him. He asked that he be awarded for all the property taken P19,398.42. The commissioners allowed him P10,745.25. At the hearing had upon the report, the court reduced this amount and allowed the appellant P9,637.75. The commissioners took a large amount of evidence relative to the amount of damages. The testimony was conflicting as to the value of the house, two witnesses fixing it at over P12,000; another at over P14,000; one at P8,750; another at P6,250; and another at P7,050.95. The commissioners fixed the value of the house alone at P9,500, and the court at P8,792.50. This court said:

"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 the evidence but also from a view of the premises which by law they were required to make."

Referring to the manner in which the trial court arrived at its valuation of the various items, including the house, this court said:

"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."

From the foregoing it is clear that (1) the testimony was conflicting; (2) that the award as allowed by the commissioners was well within the amounts fixed by the witnesses; and (3) that the award was not grossly excessive. That it was not grossly excessive is shown by the difference between the amount fixed by the commissioners and that fixed by the court, this difference being P1,117.50, a reduction of a little over 10 per cent.

From the above review of the cases, it will be seen that this court has not only not decided that the courts cannot interfere with the report of the commissioners unless prejudice or fraud has been shown, but the decisions tend to show the contrary; that is, an award which is grossly excessive or grossly insufficient cannot stand, although there be nothing which even tends to indicate prejudice or fraud on the part of the commissioners. The case at bar is the first one wherein the court changed the award and rendered a final judgment upon the record. Had the court the power to thus dispose of the case?

Section 246 of the Code of Civil Procedure reads 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."

From this section it clearly appears that the report of the commissioners is not final. The judgment of the court is necessary to give effect to the proceedings. Nor is the report of the commissioners conclusive, under any circumstances, so that the judgment of the court is a mere detail or formality requisite to the proceedings. The judgment of the court is rendered after a consideration of the commissioners' report and the exceptions thereto submitted upon the hearing of the report. By this judgment the court may accept the commissioners' report unreservedly; it may return the report for additional facts or it may set the report aside and appoint new commissioners; or it may accept the report in part and reject it in part, and "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," Any one of these methods of disposing of the report is available to and may be adopted by the court according as they are deemed suited to secure to the plaintiff the necessary property and to the defendant just compensation therefor. But can the latter method produce a different result in reference to any part of the report from that recommended by the commissioners? The purpose of this discussion is solely to determine this question.

Section 246 expressly authorizes the court to "accept the report in part and reject it in part." If this phrase stood alone, it might be said that the court is only empowered to accept as a whole certain parts of the report and reject as a whole other parts. That is, if the commissioners fixed the value of the land taken at P5,000, the improvements at P1,000, and the consequential damages at P500, the court could accept the report in full as to any one item and

reject it as to any other item, but could not accept or reject a part of the report in such a way as to change any one of the amounts. But the court is also empowered "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 court is here expressly authorized to issue such orders and render such judgment as will produce these results. If individual items which make up the total amount of the award in the commissioners' report could only be accepted or rejected in their entirety, it would be necessary to return the case, so far as the rejected portions of the report were concerned, for further consideration before the same or new commissioners, and the court could not make a "final order and judgment" in the cause until the rejected portions of the report had been re-reported to it. Thus, in order to give the italicized quotation from section 246 any meaning at all, it is obvious that the court may, in its discretion, correct the commissioners' report in any manner deemed suitable to the occasion so that final judgment may be rendered and thus end the litigation. The "final order and judgment" are reviewable by this court by means of a bill of exceptions in the same way as any ordinary action. Section 496 provides that the Supreme Court may, in the exercise of its appellate jurisdiction, affirm, reverse, or modify any final judgment, order, or decree of the Court of First Instance, and section 497, as amended by Act No. 1596, provides that if the excepting party filed a motion in the Court of First Instance for a new trial upon the ground that the evidence was insufficient to justify the decision and the judge overruled said motion and due exception was taken to his ruling, the Supreme Court may review the evidence and make such findings upon the facts by a preponderance of the evidence and render such final judgment as justice and equity may require. So it is clear from these provisions that this court, in those cases where the right of eminent domain has been exercised and where the provisions of the above section have been complied with, may examine the testimony and decide the case by a preponderance of the evidence; or, in other words, retry the case upon the merits and render such order or judgment as justice and equity may require. The result is that, in our opinion, there is ample authority in the statute to authorize the courts to change or modify the report of the commissioners by increasing or decreasing the amount of the award, if the facts of the case will justify such change or modification.

The question now arises, when may the court, with propriety, overrule the award of the commissioners in whole or in part and substitute its own valuation of the condemned property? From a mere reading of section 246 and the remarks just made, it should be clear that the court is permitted to act upon the commissioners' report in one of several ways, at its own discretion. The whole duty of the court in considering the commissioners' report is to satisfy itself that just compensation will be made to the defendant by its final judgment in the matter, and in order to fulfill its duty in this respect the court will be obliged to exercise its discretion in dealing with the report as the particular circumstances of the case may require. But generally speaking, when the commissioners' report cannot with justice be approved by the court, one of three or four circumstances will usually present itself, each of which has for its antidote one of the methods of dealing with the report placed at the disposal of the court by section 246. Thus, if it be successfully established that the commissioners refused to hear competent evidence, then all the evidence in the case would not be before the court; the court could not, with reason, attempt to either approve or change the report, as it stood, for the reason that all the evidence of the case would not be before it; and the remedy in this case would be to "recommit the report to the commissioners for further report of facts." Again, if improper conduct, fraud, or prejudice be charged against the commissioners, and this charge be sustained, it would be safer to set aside the award thus vitiated and "appoint new commissioners" who could render a report not tainted by these things. But it is to be observed again that this discussion is confined to a case where no competent evidence was refused by the commissioners and no suspicion rests upon the motives of the commissioners in making the award. When the only error of the commissioners is that they have applied illegal principles to the evidence submitted to them; or that they have disregarded a clear preponderance of the evidence; or that they have used an improper rule of assessment in arriving at the amount of the award, then, in such a case, if the evidence be clear and convincing, the court should be able, by the use of those correct legal principles which govern the case,

to determine upon the amount which should be awarded without remanding the cause. When the matter stands in this light, it becomes the duty of the court to make "final order and judgment" in which the proper award will be made and thus end the litigation between the parties.

In Louisiana, where the procedural law on this point is similar to our own, the supreme court has used its powers in this respect quite frequently. And in this connection, we think it proper to quote from a case which, in some respects, is similar to the one at bar:

"On the question of the value of the land, 8.34 acres, the commissioners have allowed \$2,500 or \$300 per acre. The defendant has put in the record the testimony of witnesses claimed to support the allowance. Without disregarding this testimony, it is sufficient to say that the opinions of the witnesses do not seem to be based on any fact calculated to show the value of the land. * * * On the other hand the plaintiff has placed before us the titles of defendant of recent date showing the price paid by him (the defendant) for the entire body of land of which the 8 acres are a part; the acts of sale of land in the same neighborhood, and of the same quality; the assessment of defendant's property, and other testimony on this issue of value. * * * Giving all possible weight, or rather restricting the testimony of the plaintiff's witnesses to its due influence, and giving, we think, necessary effect to the acts by which defendant purchased, the acts of sale of other land, the assessment of value, with due allowance for underassessment, and the other testimony of record, we reach the conclusion that the award gives two-thirds more than the value of the land. We fix the value of the land at \$833.33." (Morgan's Louisiana & Texas R. R. Co. vs. Barton, 51 La. Ann., 1338.)

See also T. & P. R. R. Co. vs. Southern Develop. Co. (52 La. Ann., 535), where the court held the appraisalment made by the jury too low and after discussing the evidence, increased the amount of the award accordingly. A similar case is Abney vs. Railroad Company (105 La., 446). See also T. & P. R. R. Co. vs. Wilson (108 La., 1; 32 So., 173); and Louisiana Western R. Co. vs. Crossman's Heirs (111 La., 611; 35 So., 784), where the point is touched upon.

In Missouri the statute (1 Mo. Ann. Stat, § 1268) directs that "the court shall make such order therein as right and justice may require, and may order a new appraisalment, upon good cause shown." Owing to a constitutional restriction, this provision has been construed to apply only to damages and benefits resulting to landowners in consequence of proposed improvements, the cash value of property expropriated being an issue triable, at the instance of either party, by a jury subsequent to the findings of the commissioners. Subject to this restriction, however, it has been held that the above provision of law gives the court the right to increase or decrease the amount awarded by the commissioners. In the late case of Tarkio Drainage District vs. Richardson (237 Mo., 49) the court presents, a lengthy review of its decisions on this subject.

We are clearly of the opinion that our holding on this branch of the case is supported not only by reason but by the interpretation of similar provisions of law in other jurisdictions, so far as we have had the opportunity to examine the question.

This opinion will be substituted for the short opinion rendered in the cause near the close of last term.

Johnson and Carson, JJ., concur.

Arellano, C. J., and Moreland, J., dissent.

FEBRUARY 18, 1913.

The short opinion, per TRENT, J., reads:

After a careful examination of the entire record in this case and the law applicable to the questions raised therein, we are of the opinion that P10 per square meter is a just compensation for the land taken. Without prejudice to

filing a more extended opinion in which our reasons will be set forth in full, judgment will be entered accordingly, without costs. So ordered.

Johnson, Carson, Moreland, JJ., concur.

Arellano, C. J., and Torres, J., dissent.

TORRES, J., dissenting:

I am of the opinion that, for the reasons stated in the appealed judgment of January 4, 1912, and those expressed in the latter part of the majority opinion, the judgment should be affirmed with the costs against the appellant.

Value of the land fixed at P10 per square meter.

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