

**THE PHILIPPINE RAILWAY COMPANY, PLAINTIFF AND APPELLEE,
VS. IGNACIO DURAN ET AL., DEFENDANTS. LUCINA ANDRADA,
LUCIO ECHIVERE AND SERAFIN ADVINCULA, APPELLANTS.**

G.R. No. 9759. January 11, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the Province of Capiz, on the 12th of July, 1910. Its purpose was to expropriate certain lands particularly described in paragraph 2 of the complaint, and Exhibit A, which was made a part of the petition. The plaintiff alleged that a portion of said land was public land; that a portion was claimed by certain individuals whose names are mentioned in the complaint; that the value of the land belonging to said certain individuals was about P900.

To the registration of said parcels of land a number of oppositions were presented.

After the presentation of a number of oppositions and a consideration of the necessity for the said expropriation, the Honorable F. Santamaria, judge, on the 12th of January, 1912, found that the plaintiff was entitled to the expropriation of the land in question and appointed a commission for the purpose of viewing and appraising the land involved.

On or about the 3d of April, 1912, the said commissioners rendered their report and the same was submitted to the Honorable James S. Powell, judge, on the 10th of April, 1912. Upon a consideration of said report, Judge Powell, in consideration of certain objections made thereto, set the same aside and appointed a new commission.

Later another commission was appointed, which, after due investigation and after giving each of the respective opositores as well as the petitioner an opportunity to be heard upon the value of the various parcels of land involved, made a detailed report to the court, in which was set out the amount of land belonging to each of the opositores, together with their estimate of the value of the same. After an examination of said report and after hearing the respective parties, the Honorable F. Santamaria, judge, approved the same and rendered a judgment in favor of each of the opositores who proved that he was the owner of any portion of the land involved, for the amount fixed by said commissioners, together with costs against the plaintiff. To that judgment, a number of the opositores presented their exception. Lucina Andrada, Lucio Echivere, and Serafin Advincula, only, presented briefs in this court. In this court the said appellant, Lucina Andrada, alleges that the lower court committed the following errors:

- " (a) In accepting the report presented by the commissioners ;
- " (b) In not allowing her the sum of P1,800 instead of the sum of P1,107 for her parcel of land;
- " (c) In not granting her interest upon the amount allowed for her land from the date on which the plaintiff took possession of the land;

" (d) In the fact that the lower court found that the land appropriated by the plaintiff was 1,107 square meters, instead of 1,449 square meters; and

"(e) In ordering the amount allowed for her parcel of land paid to the clerk of the court."

With reference to the first assignment of error above noted, after a careful examination, we are of the opinion that the lower court committed no error in accepting the report of the commissioners. The record shows that said commissioners exercised the greatest care and diligence in ascertaining not only the extent of the land in question, but its real value, based upon the rules for the valuation of real property. They not only personally inspected the parcels of land involved, but heard all of the witnesses, pro and con, which the respective parties desired to present. The lower court was justified, from all the facts and circumstances, in accepting the report of the commissioners.

With reference to the second assignment of error, the commissioners reported that the land involved was worth P1,107. There is nothing in the record which shows that said amount is grossly inadequate for the land in question. The appellant claims that the land is worth P1,800. We think the proof adduced fairly justifies the conclusion of the commissioners. We find no reason for reversing the conclusions of the lower court upon the second assignment of error.

With reference to the third assignment of error, to wit, that the appellant is entitled to interest from the date on which the plaintiff took possession of the land, we are of the opinion that the contention of the appellant is tenable; that she is entitled to interest upon the amount allowed her from the date on which the plaintiff took possession of her land.

In the case of *Philippine Railway Co. vs. Solon* (13 Phil. Rep.. 34) we held that the owner of land taken in condemnation proceedings is entitled to interest upon the amount awarded from the time the company takes possession of the land. The period for which the owner of the land is entitled to recover interest might depend upon whether there had been a tender of the amount awarded or not. For instance, if the plaintiff in the present case had, at the commencement of the action, deposited with the court an amount equal to the amount which the court finally found was the real value of the land, and if that amount was left on deposit at the disposition of the owner of the land, then and under those circumstances, there might be some question of the right of the owner of the land to collect interest from the date of said deposit. In the present case, however, no deposit was made equal to the value of the land, as declared by the court in its final judgment. No tender of any character whatever was made by the plaintiff to the defendant. Under these circumstances, therefore, we are of the opinion that the doctrine declared in the case of *Philippine Railway Co. vs. Solon* (supra) should be followed, and that the defendant should recover of the plaintiff interest at the rate of 6 per cent from the date on which the plaintiff took possession of the particular parcel of land in question. There is nothing in the record which shows the exact date on which the plaintiff took possession of the parcel of land belonging to the defendant. The judgment of the lower court is therefore hereby modified and it is hereby ordered and decreed that the defendant recover from the plaintiff, not only the sum of P1,107, but interest thereon at the rate of 6 per cent from the date on which the plaintiff took possession of the parcel of land, [for] which date, the record is hereby returned to the lower court to be ascertained by it.

With reference to the assignment of error, that the land in question contained 1,449 square meters instead of 1,107 square meters, it may be said:

(a)

That the commissioners found that the parcel of land contained 1,107 square meters and not 1,449 square meters; and

(b)

That the plans prepared by the engineer of said parcel of land also show that it contained 1,107 square meters instead of 1,449 square meters.

There is nothing in the record, which, in our opinion, is sufficient to reverse or modify the finding of the lower court upon that question.

With reference to the fifth assignment of error above noted, that the lower court committed an error in ordering the amount awarded by the commissioners deposited with the clerk instead of ordering the same paid to the defendant-appellant, we are of the opinion that the lower court committed no reversible error in that order, for the reason that the defendant, by her appeal and her exception to the judgment rendered by the lower court, clearly indicated that she was not satisfied with the amount allowed her. And, moreover, she made no request in the lower court that the money should be delivered to her at that time. Until the appeal was settled, it was perfectly proper that the lower court order the money deposited with the court; nevertheless, no error would have been committed had he ordered the amount awarded paid to the defendant, with the consent of the plaintiff.

With the modification above noted, the judgment of the lower court relating to the appellant, Lucina Andrada, is hereby affirmed.

With reference to the appeal of Lucio Echivere, it may be said that his assignments of error, so far as they present any important question in this court, are substantially the same as those presented by the appellant Lucina Andrada. While the facts are not exactly the same, they are analogous and the argument which is presented above in answer to the assignments of error made by Lucina Andrada, may, in our judgment, be repeated here in answer to the assignments of error presented by Lucio Echivere. Lucio Echivere also raises the question of his right to collect interest from the date on which the plaintiff took possession of his parcel of land. What was said above upon that question may be referred to again, for the purpose of answering the assignment of error upon that question, and for the reasons stated above under the assignment of Lucina Andrada, we are of the opinion, and so hold, that the judgment of the lower court should be modified and that Lucio Echivere should be allowed interest upon the sum allowed him, from the date on which the plaintiff took possession of his land. There is nothing in the record which shows that date. For the purpose of ascertaining said date, the record is returned to the lower court, with direction that proof be taken upon that question, and to render a judgment in accordance herewith, in favor of Lucio Echivere and against the plaintiff.

The only assignment of error made by the appellant Serafin Advincula is that the lower court committed an error in rendering his judgment, based solely upon the report of the commissioners. The decision of the lower court was not based solely upon the report of the commissioners. The judge clearly indicates that he not only examined the report of the commissioners, but the documentary and oral proof presented to it. There is nothing in the record which justifies us in reversing or modifying the judgment of the lower court, upon that ground.

For all of the foregoing reasons and with the modifications above indicated, the judgment of the lower court is hereby affirmed, and without any finding as to the costs of this instance, it is so ordered.

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

Carson, J., see concurring opinion

Trent, J., concurs with Justice Carson's opinion.

CONCURRING OPINION

CARSON, J.:

I concur, except that I think interest should not be allowed on funds actually on deposit in the court below, after the date of the judgment in that court which is affirmed by this court in an appeal by the owners of the land. (Philippine Railway Co. vs. Solon, 13 Phil. Rep., 34.)

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