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EMINENT DOMAIN—TIME WITH REFERENCE TO WHICH COMPENSATION SHOULD BE MADE—MEASURE OF JUST COMPENSATION—[Federal]—In 1935 Congress authorized the Central Valley Reclamation Project, which had been anticipated for some years, and in 1936 and following years, appropriated money to carry it out. It was apparent that a railway would be flooded, making necessary a relocation of the right of way. Alternate routes for such relocation were staked out in 1936. In that same year plaintiffs purchased a tract of land part of which lay within one of the alternate routes. They subdivided the land, and a town, called Boomtown, grew up in and around the subdivision. On August 26, 1937, Congress passed another act reauthorizing the project; in December, 1938, the government filed a complaint in eminent domain and a declaration of taking covering part of plaintiff's land. The trial court held that the plaintiffs were entitled to the value of their land as of the date of filing the action in eminent domain, "excluding therefrom any increment of value accruing after August 26, 1937, due to authorization of the project." On appeal the Circuit Court of Appeals held that it was error to require the exclusion of value created as a result of the project after August 26, 1937. On appeal to the Supreme Court, *held*, reversed, and judgment of the trial court affirmed. The exclusion of any increment of value arising from the project after August 26, 1937, was proper. *United States v. Miller*.¹

The principal case presents two distinct but related issues. The first is the date as of which the value ought to be ascertained for the purpose of condemnation. The second is whether any increment of value due to the project ought to be included in the award. The Fifth Amendment of the Constitution gives only the vaguest guidance in the determination of these questions.² The requirement of "just compensation" has been defined as the restoration of everything taken or its equivalent,³ or the value at the time of taking plus an amount sufficient to produce the full equivalent of that value paid contemporaneously with the taking.⁴ The general rule is that the market value as of the time of taking is to control the amount of the award.⁵ As to this first issue, both parties agreed that the date of the filing of the complaint was the proper date for computing the value.⁶

1. (1943) 87 L. Ed. 251, 63 S. Ct. 276.

2. U. S. Const. Amendment 5: "Nor shall private property be taken for public use, without just compensation."

3. *People v. City of Brooklyn* (N. Y. 1850) 9 Barb. 535.

4. *Jacobs v. U. S.* (1933) 290 U. S. 13, reversing *U. S. v. Jacobs* (C. C. A. 5, 1933) 63 F. (2d) 326; *U. S. v. Klamath and Moadoc Tribes* (1938) 304 U. S. 119.

5. *L. Vogelstein and Co. v. U. S.* (1923) 262 U. S. 337; *Carlock v. U. S.* (App. D. C. 1931) 63 F. (2d) 926.

6. *U. S. v. Miller* (1943) 87 L. Ed. 251, 63 S. Ct. 276. In the absence of a date expressly set by statute, many rules have been used by the courts. Thus Charles T. McCormick, in an article entitled *The Measure of Compensation in Eminent Domain* (1933) 17 Minn. L. Rev. 461, 495-7, lists five times which have been ruled the correct ones by the courts: 1) the date of the filing of the petition, 2) the date of the issuance of the summons, 3) the appearance of the landowner, 4) the date of entry upon or occupation of the land, 5) the date of the award or the trial in eminent domain. Several courts have used other times: time of filing of act of appropriation:

On the second and more arguable issue, i. e., what elements must be included in that value, the court reached back and disallowed any increment of value resulting from reauthorization of the project. This part of the decision is put on the general ground, which is widely accepted, that the government ought not to pay for value which it has itself created.⁷ The decision in the instant case is manifestly consistent with that proposition, and with the earlier dictum in *U. S. v. Chandler-Dunbar Water Power Company*⁸ that "one whose property is taken is not entitled to probably advanced value by reason of the contemplated improvement" nor "additional value resulting as part of a general scheme of improvement requiring the taking of the property."⁹ Nevertheless, there is respectable authority that, at least, denies the application of this principle to many fact situations. For example, one writer says: "Whatever the time fixed with reference to which compensation shall be estimated, the owner is entitled to actual value at that time, even though it may have been enhanced by reason of the projected improvement for which it is taken."¹⁰ This view may be made consistent

Lafayette, M. & B. R. Co. v. Murdock (1879) 68 Ind. 137; time of payment of money award: *Danforth v. U. S.* (1939) 308 U. S. 271; *Pardeeville Electric Light Company v. Public Service Commission* (1941) 238 Wis. 97, 297 N. W. 394; time of report: *In re City of N. Y.* (1899) 40 App. Div. 281, 53 N. Y. S. 58. See also *City of Ashland v. Queen* (1934) 254 Ky. 329, 71 S. W. (2d) 650, where the court held that value was to be determined as of the date when it generally became known that a viaduct was to be built.

The general rule seems to be that compensation should be made as of the date when the state actually acquires legal possession; time of filing of petition in eminent domain: *Central Nebraska Public Power and Irrigation District v. Fairchild* (1942) 126 F. (2d) 302; *Interstate Water Power Co. v. Adkins* (1927) 327 Ill. 356, 158 N. E. 685; *Missouri Pacific Ry. Co. v. Wernwag* (1889) 35 Mo. App. 449; time of eminent domain proceedings: *Chicago, M. & St. P. Ry. Co. v. Randolph Town-Site Co.* (1890) 103 Mo. 451, 15 S. W. 437; time of appropriation: *Seaboard Air Line Ry. Co. v. U. S.* (1923) 261 U. S. 299; *U. S. v. 813.96 Acres of Land* (1942) 45 F. Supp. 535; *Commonwealth v. Stephens* (1934) 114 Pa. Sup. 126, 173 Atl. 869; *State ex rel. State Highway Commission v. Deutschman* (1940) 346 Mo. 755, 142 S. W. (2d) 1025. The principal case, of course, is in accord with the general rule.

7. *Nichols v. City of Cleveland* (1922) 104 Ohio 19, 135 N. E. 291, 293; *Dorgan v. City of Boston* (1866) 94 Mass. 223; *Olson v. U. S.* (1933) 292 U. S. 246. Accord: *Sharp v. U. S.* (1903) 191 U. S. 341; *U. S. v. Chandler-Dunbar Water Power Co.* (1913) 229 U. S. 53; *McGovern v. City of New York* (1913) 229 U. S. 363; *U. S. v. First National Bank* (1918) 250 Fed. 299. See *City of New York v. Sage* (1915) 239 U. S. 57.

8. (1913) 229 U. S. 53.

9. *U. S. v. Chandler-Dunbar Water Power Company* (1913) 229 U. S. 53.

10. 2 Lewis, *Eminent Domain* (3d Ed.) 1329. In the curious case of *Danforth v. U. S.* (1939) 308 U. S. 271, the Supreme Court itself used language which, apart from its context, seems to countenance the landowner's claim to some value resulting from the project. The court said: "* * * changes in the value of property may occur by reason of legislation on the project. * * * Mere enactment of legislation which authorizes condemnation cannot be deemed a taking." (308 U. S. at p. 286). The implications of this statement, however, are greatly weakened by the fact that in that case the determination of value as of a later date actually reduced the award. And it may, with some reason, be denied that the *Danforth* case

with the Supreme Court's position, if it is limited to cases in which the landowner's property was not within the scope of the original improvement, and hence sustained an increase in value due to the project at a time when there was no prospect of condemnation. The cases seem to support this position. Thus, in *Rowan v. Commonwealth*¹¹ a state statute authorized the establishment of Valley Forge as a public park. Plaintiff purchased land and established a resort adjacent to the proposed project, apparently in the hopes of profiting from the location. When her land was taken by a subsequent enlargement of the area, she was allowed the value of the improvements and the value of the land that may have been due in part to its location. But the court, in a dictum, said that if her land had been included within the boundaries described in the original act, she could not have been allowed such increments of value.¹² Likewise in *Interstate Water Co. v. Adkins*,¹³ where defendant's land was not within the scope of the improvement as originally authorized, defendant was allowed the value as of the time of taking, though this had been increased by the improvement.¹⁴ On the other hand, in *U. S. v. Certain Lands in the Town of Narrangansett*¹⁵ a government breakwater created a wharf site which increased the value of claimant's adjacent lands. In condemnation proceedings to complete the breakwater it was held that "the value as of the date of the proceedings does not apply so as to entitle owner to the enhanced value, since it was sure from the beginning that this land would be condemned."¹⁶ Likewise in *Nichols v. City of Cleveland*¹⁷ it was ruled that where the land was within the confines of the original improvement, no added value because of the improvement could be allowed.¹⁸

has any bearing on the question. The landowner in that case was claiming interest from the time of taking and argued that the enactment of the legislation constituted the taking. A court might well hold that interest runs only from the day that the landowner actually loses the possession and use of his land, although the value for the purpose of condemnation is to be determined as of some earlier date.

11. (1918) 261 Pa. 88, 104 Atl. 502.

12. *Rowan v. Commonwealth* (1918) 261 Pa. 88, 104 Atl. 502.

13. (1927) 317 Ill. 356, 158 N. E. 685.

14. *Interstate Water Company v. Adkins* (1927) 158 N. E. 685, 327 Ill. 356 (dam that had been built previously and the lake formed by it had made defendant's land valuable as a summer resort before the land had been taken as reservoir). See also *Guyandot v. Bursdick* (1906) 57 W. Va. 417, 50 S. E. 521, 110 Am. St. Rep. 735, in which the court says that an owner must be entitled to get the increments of value that resulted from the proposed improvement and should not be restricted to the time before the improvement was announced. See also *Bauman v. Ross* (1896) 167 U. S. 548; *Showalter v. State* (1936) 48 Ariz. 523, 63 P. (2d) 189, 191. See dictum to same effect in *Nichols v. City of Cleveland* (1922) 104 Ohio St. 19, 136 N. E. 291, 293.

15. (1910) 180 Fed. 260.

16. *U. S. v. Certain Towns of Narrangansett* (1910) 180 Fed. 260.

17. (1922) 104 Ohio St. 19, 135 N. E. 291. See note 14, *supra*.

18. The two cases relied on in the principal case are also substantially in accord: *Kerr v. South Park Commissioners* (1886) 117 U. S. 379 (lands inside park lines to be considered as if no park were there and not to be compared in value to those outlying lands that benefited by not being taken); *Shoemaker v. U. S.* (1892) 147 U. S. 282 (any increment due to park or evidence of increments in lands adjoining not to be considered).

Thus there seem to be two definite rules for the determination of the value of condemned land. When it appears certain that the land will be included in the improvement, no increment is allowed. Where it appears with reasonable certainty that the land will not be taken, increment will be allowed. The principal case falls in the middle ground between the two rules. Whether it would be taken or not depended from the first upon which of two alternative routes should be chosen, and no one could have known whether it would or would not be taken. The Supreme Court solved the dilemma by denying any increment of value where it appears possible that the land will be taken.

E. M. C.

NEGOTIABLE INSTRUMENTS—FAILURE TO PRESENT CHECK—PAYMENT OF TAXES BY CHECK—[Missouri].—On November 4, 1932 the plaintiff gave defendant, the state Collector of Revenue, as payee, a check in payment of state and county taxes. About an hour and a half later defendant deposited it in the bank which was his regular depository. The drawee bank, which was in the same town, was open on November 4 and on November 5, 1932, until 3:00 P. M.; but it was closed for liquidation before the beginning of the next business day and before the check was presented for payment. After the drawee bank closed, the defendant charged back on the tax records the taxes for which he had given the plaintiff a receipt on November 4, 1932. In October, 1937, the plaintiff paid the taxes to the then Collector of Revenue, and brought this action to recover the amount of his loss caused by the alleged negligence of the defendant in failing to present the check before the drawee bank closed. At the close of the plaintiff's evidence, the trial court directed a verdict for the defendant. *Held*, affirmed. The defendant was not negligent; and the negotiable instruments' rule discharging the drawer pro tanto for the payee's delay in presenting a check for payment does not apply when the check is given in payment of taxes and when suit is by the drawer instead of by the payee. *Beckman v. Kinder*.¹

In a suit by the payee against the drawer of a check given for a private debt instead of for taxes, but otherwise involving facts similar to those of the principal case, the loss due to delay in presentment must be borne by the payee-plaintiff.² The rules governing such a situation are those of the

1. (Mo. 1942) 165 S. W. (2d) 311.

2. "A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay." R. S. Mo. 1939 §3201, Negotiable Instruments Law, §186. When the bank and the payee are in the same town, it is generally recognized that a "reasonable time" means before the end of the next business day after the payee has received the check. *St. John v. Homans* (1844) 8 Mo. 382; *Wear v. Lee* (1885) 87 Mo. 358; *Rosenblatt v. Haberman* (1880) 8 Mo. App. 486; *Koch v. Sanford Loan & Realty Company* (1926) 220 Mo. App. 396, 286 S. W. 732; *Missouri Pacific Railroad Company v. H. M. Brown Coal Company* (1932) 226 Mo. App. 1038, 48 S. W. (2d) 86; *Farm and Home Savings and Loan Association v. Stubbs* (1936) 231 Mo. App. 87, 98 S. W. (2d) 320. Accord: *Maxwell v. Dunham* (1927) 222 Mo. App. 193, 297 S. W. 94. *Brady, Bank Checks* (2d ed. 1926) 135, §87; 8 Am. Jur., Bills and Notes, §670, and cases there cited. The Missouri courts hold that the custom of banks in doing business through a