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EMINENT DOMAIN -VALUATION OF LAND - EVIDENCE OF POTENTIAL USE

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EMINENT DOMAIN — VALUATION OF LAND — EVIDENCE OF POTENTIAL USE — The United States Government condemned certain lands of the petitioners on the island of Oahu for a federal public purpose. Although the owners of the lands had for many years used them mainly for cattle raising, they had in view the ultimate use of them for the growing of sugar cane. The petitioners offered to prove that over 3,000 acres of the tract were suitable for the growing of sugar cane due to the climate and contour of the land. They further offered to prove that on other lands owned by them a water source was available from which water could be transported a distance of eight miles to the land in question; and that the adaptability of the land for sugar cane raising greatly enhanced the market value thereof because a prospective purchaser would take into consideration the reasonableness of procuring water and raising sugar cane. The trial court rejected this evidence on the ground that the possibility of bringing water from outside sources was too remote and speculative. The Supreme Court held that the lower court erred in rejecting this evidence, pointing out that all possible uses to which the land may be put may be shown if the possibility of such use is reasonably sufficient to affect the market value. *McCandless v. United States*, 298 U. S. 342, 56 S. Ct. 764 (1936).

The fundamental proposition underlying all condemnation proceedings is that the person from whom the land has been taken must be justly compensated by giving back to him the money equivalent of the land taken.¹ The courts unanimously agree that this money equivalent must be calculated by imagining a transaction like an ordinary voluntary sale, and not a forced sale. The compensation is to be calculated as if the owner were ready and willing to sell and the Government were an ordinary market purchaser,² ready and willing to buy; the hypothetical sale taking place through the ordinary channels and methods by which real estate is bought and sold.³ The hypothetical price which would be given in such a sale is usually called market value;⁴ and it is this price that the courts seek to determine and obtain for the owner from whom the property is taken.⁵ It can be seen at once that the term "market value," though apparently definite, is by no means as simple as it sounds. In cases where buyers and sellers are focused together in a well-organized market, e.g., the markets for stocks and bonds, market value can be definitely determined. But where buyers and sellers do not thus meet each other, the term "market value" becomes the label for a very vague process of valuation. While it is not possible to determine

¹ *Monogahela Nav. Co. v. United States*, 148 U. S. 312, 13 S. Ct. 622 (1892); *Olson v. United States*, 292 U. S. 246, 54 S. Ct. 704 (1933). Guaranteed by the Fifth and Fourteenth Amendments.

² "By what is probably the prevailing view, this enhancement of value by reason of the special fitness of the land for public use cannot be considered where it would be impracticable to utilize the property for this purpose, except by exercise of the power of eminent domain to serve tracts necessary to complete the development." *McCORMICK, DAMAGES* 525 (1935).

³ 33 MICH. L. REV. 1087 at 1089 (1935).

⁴ "'Value' or 'reasonable value' have been held inadequate substitutes for 'market value' in instructions to juries." *McCORMICK, DAMAGES* 166, note 18 and cases cited (1935).

⁵ *Olson v. United States*, 292 U. S. 246, 54 S. Ct. 704 (1933); 2 LEWIS, EMINENT DOMAIN, 3rd ed., § 706 et seq. (1909).

directly the market value of a specific piece of property, the definition of market value in terms of a hypothetical market affords an avenue by which the valuation problem may be approached.⁶ It is assumed that our hypothetical buyer will be influenced by the general factors that influence purchasers in actual sales.⁷ The time of the valuation is fixed at the time of the taking, not at the past time when the owner bought,⁸ and not at a hypothetical future time when he was planning on selling.⁹ Accordingly, the price paid by the owner is not of much weight in determining the present value.¹⁰ The possible uses to which the land may be put, either in its present condition,¹¹ or by application of a reasonable amount of capital,¹² will undoubtedly influence a purchaser. But the ordinary purchaser would not be inclined to raise his price on account of a very speculative or remote use,¹³ such as one which is contingent upon circumstances out of his control.¹⁴ In considering potential uses, it is more than likely that the purchaser would calculate as closely as possible the probable business profits, but it is unlikely that this calculation would serve as more than a rough guide in determining the price he would pay.¹⁵ The Court in the principal case, relying upon the well-considered case of *Olson v. United States*,¹⁶ reached a result which in every detail seems to suggest that the criterion as to what potential uses will be admitted as evidence is whether or not an ordinary purchaser would under our hypothetical conditions allow it to be a factor in determining the price he would pay.

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⁶ "The metaphor, though strained and fictitious, may be highly useful, even in such extreme situations, as a vehicle for legal thinking." McCORMICK, DAMAGES 166, note 17 (1935).

⁷ For factors involving supply and demand, see Hale, "Value to the Taker in Condemnation Cases," 31 COL. L. REV. 1 at 7 (1931).

⁸ Thus market value is calculated at the time of the taking. *Seaboard Air Line Ry. v. United States*, 261 U. S. 299 at 306, 43 S. Ct. 354 (1922); *Olson v. United States*, 292 U. S. 246 at 255, 54 S. Ct. 704 (1933). But the compensation does not include any increase due to demand created by the condemnation between the time the plan was adopted and the actual taking. Hale, "Value to the Taker in Condemnation Cases," 31 COL. L. REV. 1 at 17 (1931).

⁹ Although speculative attractiveness is considered. McCORMICK, DAMAGES 169 (1935).

¹⁰ *Olson v. United States*, 292 U. S. 246, 54 S. Ct. 704 (1933).

¹¹ Thus it is that all courts follow the principal case and allow the land to be valued at its most advantageous use. McCORMICK, DAMAGES 521 (1935).

¹² Some courts limit the showing of potential uses to uses of the land in its present condition. 2 LEWIS, EMINENT DOMAIN, 3rd ed., § 709 (1909), and cases cited.

¹³ Although the courts have used the phrase "speculative and remote" a good deal, they have been reluctant to shed much light on what is meant by the words. The results reached indicated that it is a question of whether a prudent and reasonable buyer would give any weight to such a use.

¹⁴ Evidence of such uses are rejected. *Darlington v. Pennsylvania Ry.*, 278 Pa. 307, 123 A. 284 (1924).

¹⁵ Consequently, estimates directly based upon values of the property for any particular use are sometimes held incompetent. See *Sacramento Southern R. R. v. Heilbron*, 156 Cal. 408, 104 P. 979 (1909), in which a careful review of the California decision is made.

¹⁶ 292 U. S. 246, 54 S. Ct. 704 (1933).