

199-3 THE FACT THAT HEARSAY EVIDENCE MAY BE USED COLLATERALLY IN CONNECTION WITH COMPARABLE VALUATIONS DOES NOT MEAN THAT HEARSAY IS ACCEPTABLE DIRECTLY ON THE ISSUE OF VOLUNTARINESS OF ONE OF THE COMPARABLE SALES. Poynter v. Commonwealth, Dep't of Highways, 423 S.W.2d 524 (Ct. App. Ky. 1968).

Claimants appeal from a trial court finding awarding damages for a taking for highway purposes. The errors alleged on appeal relate to certain evidentiary procedures at trial. In the lower court, the appraisal witnesses for the State introduced photographs of two tracts for purposes of making a comparison of sales. The allegedly comparable sales took place in 1961 and 1963, while the photographs were taken in 1966. The claimants alleged that there was no showing that the condition of the property in 1966 was the same as at the time of the comparable sales and therefore the evidence was incompetent. In response, the witnesses for the State testified that they had made inquiries and found that there had been no changes made in the respective tracts. Claimants asserted that this was inadmissible hearsay evidence. The claimants further challenged one of the comparable sales on the ground that it was not voluntary. To support this contention, one of the claimants' witnesses testified that the former owner of the comparison property had told him he was leaving in order to avoid an antagonistic neighbor. The State objected to this testimony as hearsay and the testimony was excluded. Claimants asserted that this should have been admitted, especially in light of the admission of the State's hearsay testimony.

The Court of Appeals noted that the two types of hearsay evidence introduced at trial differed significantly in their relationship to the subject matter to be proved. With respect to the testimony of the State witnesses regarding unchanged conditions, the actual point in contention with that evidence was the valuation of the property as proved through comparable sales. The question of changed conditions was only collateral to the main issue of property value. For this reason, the court held that the witnesses were justified in resorting to hearsay evidence to clarify that point.

Furthermore, it appears that the pictures themselves were capable of substantiating the hearsay allegation of unchanged conditions since they indicated well-established conditions which must have existed for the necessary period of time. This would relegate the hearsay evidence to little more than corroboration and while it would not improve the quality of such evidence it would certainly diminish any prejudicial effect it might have.

As to the second piece of hearsay testimony--the assertion of non-voluntary sale--the court was unwilling to allow its reception into evidence. This testimony reflected directly on the comparability of the sales and if believed could not only contradict the valuations of the State, but could also constitute affirmative evidence that the land in question should be valued considerably higher. Consequently, the court observed that this was evidence bearing directly on the main issue in the case and could not be hearsay in nature.

The case is important in that it demonstrates the possibility of dealing with hearsay problems under either condemnation law or the laws of evidence. In the former case, condemnation law is clear in providing an exception to the hearsay rule for collateral information employed by an expert in reaching his appraisal. Thus, only his direct testimony on valuation and comparable sale values must be free of hearsay--he may avoid delay and burdensome direct proof as to the collateral issues by corroborating them with hearsay evidence. This exception was devised to avoid what would otherwise be prohibitive delay in condemnation proceedings which ordinarily require an expert to collate substantial secondary information in reaching his appraisals. Since this exception ordinarily applies only to the secondary data involved in an appraisal, it would not have saved the testimony relating to the voluntariness of the comparable sale.

The entire problem could have been identically disposed of under traditional rules of evidence concerning hearsay. Where the hearsay evidence does not concern a point directly in issue (condition of comparable properties is tangential to the question of value of property taken), then the admissibility of hearsay is a balancing of the inconvenience of direct proof against the need for the evidence. In the instant case the need would clearly dominate and the hearsay could come in. On the other hand, any balancing of the issue of voluntariness, since it would destroy the comparable sale evidence, would probably reveal sufficient danger of prejudice to prevent admission of the evidence. Indeed, the direct nature of such evidence would probably prevent any application of a balancing test, requiring instead that the evidence come under one of the traditional exceptions.

While rules of evidence and condemnation law will not always produce identical results on a hearsay question, it should be obvious that there is an expansive area available to courts that wish to admit such evidence by a favorable interplay of the two bodies of law. In the instant case, condemnation law was employed as the easiest route for admission of the collateral hearsay while traditional evidentiary doctrine was used to prevent introduction of the hearsay evidence on voluntariness.

199-4 WHERE THERE IS A WIDE VARIANCE IN VALUATIONS AND GREAT DIFFERENCE IN EXPERT OPINION, A COMMISSIONERS' REPORT MUST CONTAIN SUFFICIENT INFORMATION TO PERMIT INTELLIGENT JUDICIAL REVIEW. Board of Supervisors v. Matthews, 289 N.Y.S.2d 45 (Sup. Ct. 1968).

Pursuant to an appropriation of claimant's property, the Commissioners of Appraisal filed a valuation report which consisted primarily of a final figure for value of the land coupled with a stipulation that the figure only applied if the property was unencumbered. At the hearing held to take evidence on the appraisal, there was conflicting testimony by experts for both sides concerning both the highest and best use of the property as well as the actual cash value of it. The claimant had asserted that there was a preexisting legal nonconforming industrial use which should substantially alter the value of the property.