

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.

The governing statute which prescribes the form of the commissioners' report simply requires that a report be made accompanied by the minutes of any testimony taken. Beyond that, the statute is silent as to the format or content of the report. The claimants object that the terseness of the report prevents the filing of specific exceptions. Further, the report is attacked as being against the weight of the evidence introduced at the hearing and is otherwise grossly inadequate.

The Supreme Court noted that the commissioners were not bound by any particularized format but nonetheless concluded that there were certain minimum standards of clarity, certainty and explicitness which governed any submitted report. These standards were largely responsive to the particular facts of a given case but in all instances required that the report contain adequate information to permit a reviewing court to relate the commissioners' conclusions to both the assertions of the parties and the evidence taken at the hearing. The report in the instant case did neither.

The impossibility of intelligent review was highlighted by the issue of a preexisting nonconforming use. The claimant had asserted that prior use of the property in part as a machine shop constituted an enhancement of the overall value of the property taken. Since this would alter the highest and best use and consequently the fair market value of the property, the owner was entitled to either a favorable finding or sufficient negative conclusions to enable him to frame an appeal. The silence of the report on this issue left it unclear whether the commissioners had found such a use and simply ascribed a lower value to it or whether they had completely rejected it.

While the reports of commissioners with regard to valuations are ordinarily given a high degree of presumptive validity, this case indicates the minimum content which such reports must have in order to warrant such judicial deference. The case is unusual in that the normal objection to a commissioners' report involves the nature of the evidence necessary to rebut it. But even this indicates that a certain amount of factual underpinning is expected in such appraisals and a failure to so provide it necessitates a remand for further hearings and documentation.

199-5 ALABAMA SUPREME COURT RULES THAT CONDEMNEE IS NOT ENTITLED TO DAMAGES AND ATTORNEY'S FEES WHERE THE CONDEMNING AUTHORITY HAS DISMISSED THE PROCEEDINGS PRIOR TO THE ASSESSMENT OF DAMAGES AND COMPENSATION. Pappas v. City of Eufaula, 210 S2d 802 (Ala. 1968).

The City of Eufaula instituted eminent domain proceedings against the condemnees, who thereupon engaged legal counsel to represent them in the proceedings. Before the court could assess the condemnation damages and measure of compensation, the city dismissed the proceedings. The relevant Alabama statute governing the payment of attorney's fees in condemnation cases requires that the condemning authority shall be liable for such costs when it fails to pay the "damages and compensation assessed at any time within six months after the assessment thereof." Plaintiffs maintain that such an obligation is triggered by