Buffalo Law Review

Volume 11 | Number 1 Article 96

10-1-1961

Property—Miscellaneous Property Cases

Buffalo Law Review Board

Court stated, "it is the only kind of delivery that would be practicable under the circumstances where undoubtedly the donor would want to retain possession of the certificate." The Court, however, reasoned that in these circumstances the point of no return for a sufficient delivery can be reached only when there is a transfer of record on the stock books of the company. This is so because the donor does not relinquish control and dominion over the part interest until the transfer on the books is made, before which time he may change his mind. Since the transfer of record was not made in decedent's lifetime no valid gift *inter vivos* was completed as to any of the stock.

Bd.

MISCELLANEOUS PROPERTY CASES

In the area of eminent domain the Court of Appeals in the current term has ruled: (1) When property which had not been considered in the planning of the original project has increased in value as a result of the project, this enhanced value must be considered as part of the market value of the property;[87] (2) Where a value on property is set a) without taking into consideration the difference in property value between two adjoining locations, or, b) while considering the fact that the owners have failed to make the best use of the property, the determination of the value should be set aside;[88] (3) If there has been no change of grade in the by-ways abutting a piece of property, even though there has been a change in the access to the property and a diversion of traffic therefrom, the landowner shall not be entitled to damages resulting from a change in the highways.[89]

Andrews v. State of New York[90] involved a condemnation proceeding wherein the Court of Claims found that the property taken had not been considered within the scope of the original project but was found to be needed at a later date for the construction of transmission lines.[91] The property which was taken now had increased in value as a result of the initial project. The Court of Appeals found that where property is appropriated, which had not been considered as needed within the original project and which as a result of the project, had increased in value, then the market value must be determined so as to include the enhanced value of the property.

In *In re Clearview Expressway, City of New York*,[92] the city appraisers' value of the property taken was set at $750,000; whereas, the property owners' appraisal was set at $1,658,500. The property involved was a 19-acre parcel located in two adjoining zones of different and highly-conflicting values. The

87. Andrews v. State, 9 N.Y.2d 606, 217 N.Y.S.2d 9 (1961).
88. In re Clearview Expressway, City of New York, 9 N.Y.2d 439, 214 N.Y.S.2d 438 (1961).
89. Selig v. State, 10 N.Y.2d 34, 217 N.Y.S.2d 33 (1961).
90. Supra note 87.
91. 10 Misc. 2d 217, 188 N.Y.S.2d 854 (Ct. Cl. 1959).
92. Supra note 88.

property in question had, up to the time of taking, been undeveloped by the landowners due to an apparent lack of immediate funds. The city appraiser had apparently used the value of the property in the lesser valued of the two zones in reaching a figure for the parcel of land in question. There is also evidence in the record to indicate that the appraiser's figure was partially based upon the fact that the claimants herein had failed to develop the property, and thus concluded that the property was worthless. The Appellate Division affirmed an order of Special Term setting the value of the property at $710,000.[93] Claimant, on appeal, urged that there was some question as to whether or not the judgment of the Appellate Division was supported by substantial evidence, and whether due consideration was given to the evidence presented. Normally, where the opinion of an expert is supported by actual sales, this will be considered as substantial evidence and accepted by the court.

The Court of Appeals ruled that where there was an indication that an appraiser had failed to take into consideration the difference in value between two separate zones and had not afforded the landowners the fair potential value of their property because they had failed to exploit it fully, this value as set must be rejected and a new determination made.

The rule in New York as to the diversion by the State of a highway abutting on a piece of property was reviewed in *Selig v. State*.[94] When the highway fronting on the claimants' property was converted into the New York State Thruway, and the Thruway was raised approximately eight feet, the main stream of traffic was thereby diverted. The claimants' property was not taken nor used for the construction, and the only claim herein was for the loss of value as a result of the change of the grade in the highway. Further, the claimant was not deprived of access or egress from the property, as access roads were provided. The courts below allowed damages to the extent of $40,000, basing the award on the diversion of traffic and the circuity of access.[95] The Court of Appeals held that the rule in New York had been and shall continue to be, that to be compensable, damages must result from a change in grade, and that damages resulting from the diversion of traffic and from the circuity of access may not be recovered.[96]

Bd.

TAXATION

Statute Assessing Trailers to Owners of Real Property Upheld

The house trailer or mobile home has become more and more a part of the American scene. The families residing in these homes have presented a

93. 9 A.D.2d 949, 195 N.Y.S.2d 704 (2d Dep't 1959).
94. Supra note 89.
95. 12 A.D.2d 688, 207 N.Y.S.2d 886 (3d Dep't 1960).
96. See McKale v. State, 278 App. Div. 886, 104 N.Y.S.2d 981 (4th Dep't 1951).