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Property—Eminent Domain-Denial of Interest Prior to Filing of Claim

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intruders without a finding that the disputed parcel of land was, in fact, Indian land.

In answer to the dissent, that too broad a meaning has been given to Section 8, it can be said that a broader interpretation has been given to the *Dibble* case than that intended. Therefore, the decision of this case is not contrary to the rule in New York, but rather, it merely gives to Section 8 the full interpretation it was meant to have. Thus, it can be concluded that this case does add somewhat to the prior rule by establishing the full powers of the County Court under Section 8.

It would be an unreasonable technicality to hold that Section 8 only gives the Court power to determine whether an individual is an intruder or not, and that the Court does not have power in making such a determination, to determine the right and title in the land intruded upon.

EMINENT DOMAIN—DENIAL OF INTEREST PRIOR TO FILING OF CLAIM

The constitutionality of New York Court of Claims Act, Section 19, Subdivision 1, which denies interest to a claimant for a period beginning six months after accrual of a claim until the claim is filed,[50] was upheld in *La Porte v. State*.[51]

Title to an unimproved strip of claimants' lot vested in the State for thruway use by an appropriation on June 1, 1953, pursuant to the New York Highway Law Section 347, Subdivision 5-2, when a map and description of the property was filed by the State with the County Clerk of the county in which the property was located. A claim for compensation was filed on April 7, 1955. Personal service on claimants was effected later in the same month. The Court of Claims allowed interest from June 1, 1953, until the claim was filed, upholding the claimants' contention that a denial of interest from the end of six months after the accrual until the claim was filed, was a failure to allow just compensation for the appropriation and was therefore unconstitutional.[52] The Appellate Division reversed and dismissed the claim holding that, "if nothing occurred to bring home knowledge of taking to claimants, they had the full use and benefit of the land during the interval and could not reasonably expect both interest and possession."[53] The Court of Appeals in a 4-3 decision affirmed on the same grounds and thereby held Section 19, Subdivision 1, constitutional. The dissenting opinion particularly challenged the "outrageous" twenty-two month delay in serving notice, rejected the proposition that full use and possession are a substitute for interest where claimant has no knowledge of the taking, argued that the New York Legislature intended a claim to

50. N.Y. CT. CL. ACT § 19 states:
If a claim which bears interest is not filed until more than six months after the accrual of said claim, no interest shall be allowed between the expiration of six months from the time of such accrual and the time of the filing of such claim.
51. 6 N.Y.2d 1, 187 N.Y.S.2d 737 (1959).
52. La Porte v. State, 5 Misc. 2d 419, 159 N.Y.S.2d 596 (Ct. Cl. 1957).
53. La Porte v. State, 5 A.D.2d 362, 172 N.Y.S.2d 249 (3d Dep't 1958).

accrue on notice and interpreted the constitution to require some interest to be paid for the appropriation from the time of vesting until a claim did accrue on notice.

La Porte is apparently the first case dealing with a Section 19 claim, seeking interest because of the taking of title without claimant having personal notice of the taking through service or loss of possession. Condemnation cases, cited by the Court for the proposition that "no constitutional mandate is violated by the denial of interest while the owner has enjoyed the full beneficial use of his premises,"[54] differ from *La Porte,* in that title in those cases did not vest in the State until the condemnee had been personally served; therefore, the question at issue related to the payment of interest from notice rather than title vesting.

The notion that possession, continued use and enjoyment are compensation and should be an offset to the claim for interest runs through condemnation cases cited by the court.[55] Had this offset been claimed by the State, it would apparently have settled the mind of the majority as to the constitutional requirement of compensation, for, on the facts of the case, offset exceeding the interest claimed might have been had by the State for the twenty-two months during which claimants had undisputed possession of the property.

Since the offset was not claimed, the Court reached the constitutional issue. New York's Constitution requires just compensation be paid for property taken by the State.[56] Since the claimants had full use of the property from the initial vesting in the State until the claim was filed, the question in the present case is whether or not property was taken from claimants solely on the basis of the State's taking of title. The court does not equate loss of title to "taking of property." New York has thus defined "taking": "It is sufficient that the person claiming compensation has some right or privilege secured by grant, in the property appropriated to the public use, which right or privilege is destroyed, injured or abridged by such appropriation. Any limitation on the free use and enjoyment of property constitutes a taking."[57] The United States Supreme Court held in *United States v. Dickenson* that property is taken within the meaning of the 5th Amendment to the Constitution, "when inroads are made upon the owner's use of it to an extent that, as between private parties, a servitude has been acquired either by an agreement or in course of

54. *Supra* note 51 at 741; Donnelly v. City of Brooklyn, 121 N.Y. 9, 7 N.Y. Supp. 49 (City Ct. 1889); Shoemaker v. United States, 147 U.S. 282 (1892); see also Jacobs v. United States, 290 U.S. 13 (1933).

55. In re Mayor of City of New York, 40 App. Div. 281, 58 N.Y. Supp. 58 (1st Dep't 1899). Claimants sought payment for the value of land appropriated for park use, for interest, taxes and assessments. It was held that they were entitled to their money and its use, but the value of the retained possession of the land from the time title was taken until the claim was settled, had to be used as an offset and thus no interest was allowable. See Hamersley v. Mayor of City of New York, 56 N.Y. 533 (1874).

56. N.Y. CONST. art. I, § 7(a): "Private property shall not be taken for public use without just compensation."

57. Story v. New York El. R., 90 N.Y. 122 (1882).

time."[58] Absent special circumstances, it does not seem from either the Federal or State definitions that the mere taking of title is such a limitation on the free use and enjoyment of property as to constitute a taking which requires compensation.[59] The holding of this case, that the unsuspected loss of legal title to land without loss of possession does not require compensation in the form of the interest on the principal obligation except to the extent permitted by statute, is consistent with this conclusion. If the claimant has knowledge, he may file a claim and interest runs from the time of such filing. Section 19 seems to go a step further than is constitutionally required, and gives interest on a claim for six months where title is transferred to the State under the Highway Law, even if claimant has no knowledge of the appropriation.

EMINENT DOMAIN—CONTRACTUAL EXEMPTION

In *Society of the New York Hospital v. Johnson*,[60] a bill for injunctive relief was against the State Superintendent of Public Works. The Society of the New York Hospital argued that it had a contractual exemption from the exercise of eminent domain upon its hospital lands, as manifested by special statute of 1927, which had neither been expressly nor impliedly repealed.[61] The Superintendent, while conceding the exemption rested upon contract and there had been no express repeal, contended that the simultaneous enactment of an amendment to the charter of the City of White Plains, prohibiting the taking of the Society's hospital lands,[62] indicated that the statute upon which

58. 331 U.S. 745, 748 (1957). U.S. CONST. amend. V; "No person shall be . . . deprived of . . . property without due process of law; nor shall private property be taken for public use, without just compensation." The provision for just compensation is applicable to the states through the 14th Amendment; Chicago B. & Q.R. Co. v. Chicago, 166 U.S. 226 (1897).

59. "May we say that . . . what he does not know does not hurt him?" from dissenting opinion, *supra* note 51 at 746. The dissent suggests that a condemnee may be hurt: (1) he may unknowingly improve the land, (2) he may be a paying tenant of the State whether he likes it or not, (3) he may be deprived of time to seek new premises. Also, the condemnee may be subject to damages if he unknowingly makes a contract to sell land the title to which is in the State.

60. 5 N.Y.2d 102, 180 N.Y.S.2d 287 (1958).

61. N.Y. SESS. LAWS 1927, c. 659, § 1 provides;

> . . . No street or avenue or road shall hereafter be laid out or opened through or upon any of the lands and premises in the City of White Plains, lying between Mamaroneck Avenue, Bloomingdale Road, Westchester Avenue, North Street, The St. Agnes Home, Land of Daniel Maloney and the Burke Foundation, and none of said land shall be taken for any use whenever and so long as the same shall be owned or occupied for hospital purposes by the Society of the New York Hospital, provided however, that the said The Society of The New York Hospital shall dedicate, without claim or award for damages, for street purposes, the following parcels of land, and shall, in addition thereto, provide one hundred and fifty thousand dollars for the paving and regulating of the street described in said parcels one and two. . . .

62. N.Y. SESS. LAWS 1927, c. 653, provided an amendment to the Charter of White Plains in the following substance:

> It shall be unlawful to open any streets through the grounds belonging to The Society of The New York Hospital, now occupied by Bloomingdale Hospital as long as the same is owned or occupied for hospital purposes.