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Eminent Domain — Valuation Of Cemetery Property

The fundamental question in evaluating the value of land condemned by the state in eminent domain proceedings is, "what has the owner lost, not what has the taker gained?"¹⁷

In a decision concerning the evaluation of undeveloped cemetery property the Court of Appeals¹⁸ affirmed the method of evaluation used by the Court of Claims:¹⁹ The number of lots that the property would have eventually been divided into was multiplied by the unchallenged sales price less the sales cost; the present value was then established by dividing this total amount by forty, the economic life of the property, and this amount was discounted at the rate of two per cent per annum.

Under the circumstances of the case, the land acquired by the state was annexed to an old and well-established cemetery in which most of the Roman Catholic population of the area expected to be buried. It is pointed out by the dissent that it is necessary, as a result of this acquisition by the state, for the cemetery to acquire new lands and the price it will pay will be that which a willing buyer would pay a willing seller for unused cemetery land, rather than what the cemetery would cost if purchased lot by lot, a difference in this case, according to the state's computation, of \$26,000. This then does not represent what the owner has lost, under the general rule.

On the other hand, evidence as to mere offers, whether made by the owner or to him, is universally excluded,²⁰ and the relatively unusual nature of the use to which the land is to be put thereby presents some difficulty in finding similar property to form a comparison.²¹ Thus, in the absence of adequate proof by the state of the market value of other property sold as a whole, it would seem that the Court came to the only supportable conclusion.²²

Eminent Domain — Just Compensation

When private property is taken for any public purpose, the compensation must be just and shall be ascertained by a jury, or by the supreme court without a jury, or by not less than three commissioners.²³ Just compensation may be determined by any number of elements, including fair market value as of the date of

17. *Boston Chamber of Commerce v. Boston* 217 U.S. 189, 195 (1910).

18. *St. Agnes Cemetery v. State*, 3 N.Y.2d 37, 163 N.Y.S.2d 655 (1957).

19. 208 Misc. 171, 141 N.Y.S.2d 532 (Ct. Cl. 1955).

20. 4 NICHOLS, *EMINENT DOMAIN* §12.3113(3) (3rd ed. 1950).

21. *Fidelity Union Trust Co. v. Union Cemetery Ass'n*, 104 N.J. Eq. 326, 145 A. 537 (1929); *East Ridgelawn v. Winne*, 11 N.J. 459, 94 A.2d 833 (1952).

22. *Accord*, *Cementerio Buxeda v. Puerto Rico*, 196 F.2d 177 (1st Cir. 1952).

23. N.Y. CONST. art. I, §7.