

10-1-1954

Property—Real Property—Condemnation Proceedings

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Recommended Citation

Anthony J. Vaccaro, *Property—Real Property—Condemnation Proceedings*, 4 Buff. L. Rev. 108 (1954).

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BUFFALO LAW REVIEW

Condemnation Proceedings

In a condemnation proceeding the City of New York claimed to be the equitable owner of a parcel of land by virtue of an executory contract of sale, and as such entitled to the award, subject to performance of the contract. The owner disputed the validity of the contract and also claimed it was tainted with fraud.¹⁷

The trial judge declined to pass on the validity of the contract or the city's claim, believing that his only power was to determine legal ownership and make the award accordingly.

The condemnation statute is the measure of the court's jurisdiction.¹⁸ After examining the controlling statute,¹⁹ the court unanimously reversed, concluding that the use of such sweeping terms as "all questions of title" and "every estate, interest and right, legal or equitable" indicated a legislative intent to give the trial court the power to adjudicate all questions of ownership between the parties present in the one proceeding and thereby avoid multiplicity of actions.

The owner had not been deprived of his right to a jury trial under C. P. A. § 425 on the issues of fraud and conditional delivery, because, by stating in open court his willingness to have the validity of the contract litigated, the right to jury trial had been waived.²⁰

Landlord and Tenant

In *Central R. R. Garage Corp. v. Eastern Transport Co.*,²¹ the court was presented with an unusual situation. On September 7, 1951 defendant leased property from plaintiff for twenty-one years with an agreement that if defendant was "unsuccessful in obtaining possession" either party might cancel the lease on or before August 17, 1952. Defendant commenced summary proceedings against a statutory tenant and obtained a final order of eviction. However, the statutory tenant received a stay of execution until June 13, 1952 which was extended until August 25, 1952 whereupon defendant, mindful of the deadline, cancelled the lease on August 8, 1952. Subsequently it was discovered that the Municipal Court had vacated the tenant's stay on July 19, 1952

17. *In re Site For Jefferson House, City of New York*, 306 N. Y. 278, 117 N. E. 2d 896 (1954).

18. *Culver Contracting Corp. v. Humphrey*, 268 N. Y. 26, 196 N. E. 627 (1935).

19. NEW YORK CITY ADMINISTRATIVE CODE § B 15-1.0 (5), (6); § B 15-12.0 (d).

20. *Baird v. Mayor etc., of City of New York*, 74 N. Y. 382 (1878); *Matter of New York L. & W. R. Co.*, 98 N. Y. 447 (1885); 4 CARMODY-WAIT, NEW YORK PRACTICE 2665 (1952).

21. 307 N. Y. 120, 120 N. E. 2d 524 (1954).