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EVIDENCE—SALES OF SIMILAR LAND AS EVIDENCE OF VALUE IN CONDEMNATION PROCEEDINGS

The desirability of admitting sales of similar land as evidence of value of property taken by condemnation is generally conceded.¹ There can be no question but that this is the proper view. It is the task of the jury to ascertain from the evidence presented the true market value of the land condemned, the market value being the acceptable price in legal currency as between one who desires to purchase and one who desires to sell without personal or legal compulsion having any effect on either party. The market value of certain land is created and guided by the sales of similar realty in that vicinity. What then could be a better indication of the general selling price than evidence of the value received in the sale of similar lands?

In spite of this reasoning, there is some authority contra.² The view expressed by the latter decisions is that the market value is that price which would be received at a well conducted sale which was brought to the notice of all potential purchasers. Therefore, individual sales would be of little or no value. The proponents of this view point out that it would be difficult to bring out the circumstances of each sale and that each sale depends upon the urgency, necessity and peculiar desires of both the seller and the buyer. They also feel that admission of such evidence would introduce collateral issues into the trial. From a practical standpoint, adherence to the latter view would seem to exclude all but opinions of experts as evidence of value. Market value follows the trend of all sales of similar land; and even though peculiar circumstances enter into each sale, the true market value is determined by these sales. The better view seems to be that particular sales of similar lands should be placed before the jury as evidence of value. However, it may be shown that the sale was made under extraordinary conditions, thereby lessening its probative value.³

Offers to sell are not admissible. It is readily seen that such offers are speculative and their admission would introduce collateral issues. However, it has been held that bona fide offers to buy are admissible. It would seem that the latter would be subject to the same objections as the former.

The question of whether or not sales of similar lands to a party having the power of eminent domain are admissible as evidence of value is well settled. The overwhelming weight of authority denies admission of such sales. If sales to a party having the power of eminent domain are to be admitted at all, it should first be affirmatively shown by the party seeking admission that the sale was not conducted under threat of condemnation proceedings. It has been held that an award by a jury in condemnation proceedings against similar property is admissible as evidence of value. This seems proper since a finding by a jury is the market value of that particular land; and if the lands are similar, it should be admitted.

Before a sale of land is admissible as evidence of value, the party submitting must show that the land sold is reasonably similar to that condemned so as to have sufficient probative value for admission. For purposes of discussion, the similarity required may be divided into three classes: (1) the characteristics of the lands must be reasonably similar, (2) the location of the lands must be sufficiently near in distance and (3) the sales must be similar in point of time.

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8 St. Louis O. H. and C. Ry. Co. v. Fowler, 142 Mo. 673, 44 S. W. 771 (1898) (lack of similarity in physical characteristics); Teele v. City of Boston, 165 Mass. 88, 42 N. E. 506 (1896) (lack of similarity of location); Commonwealth v. Combs, 229 Ky. 627, 17 S. W. (2d) 748 (1929) (lack of proximity in point of time).
The characteristics of land whose sale is to be introduced must be reasonably similar to those of the land whose value is in question. The value of improved residence lots on an improved street cannot be introduced as evidence of the value of unimproved land,9 nor can the sale of non-platted lots in the same vicinity be introduced as evidence of the value of platted lots.10 However, characteristics may be sufficiently similar even though there is a variation in size,11 in improvements thereon,12 or in restrictions on the lots.13 If the physical characteristics as a whole are reasonably similar, the evidence should be admitted.

It is well settled that the land whose sale is to be introduced must not be so distant as to be of no assistance in the determination of the market value of the condemned land. The market value varies with the locality so that the sale price of land in one locality does not necessarily indicate the market value of land somewhat distant. It has been held proper to exclude the sale of land on a different street,14 but in Gardner v. Inhabitants of Brookline15 a sale of a cranberry farm was admitted as evidence of the value of another such farm situated several miles away. It is obvious from the above examples that no definite standard can be fixed. However, it can be said that the rule as to proximity necessarily varies with the nature of the land. The more unusual the quality or the use of the land, the greater the distance at which the sale price of similar lands should be allowed. As distance increases, the force of the evidence decreases and a wide discretion is allowed the trial judge in drawing the line at which evidence having no practical value shall be admitted.16

Just as it is necessary to have similarity of characteristics and proximity of location, it is also necessary that the sale to be introduced was sufficiently close in time to the condemn-
tion so as to be of probative value. Market value fluctuates over a period of years, or even months, and a prior or subsequent sale may be of little or no assistance in determining the market value of land at the time it was condemned. No clear line can be drawn from the cases and the results vary with the circumstances. The only reasonable rule which may be applied is that remoteness in time is a valid objection only where conditions have changed to such a degree as to make the sale an unreliable test of value.

The necessary conclusion to the above discussion is that sales of similar lands in the ordinary course of business, and awards by juries in condemnation proceedings against similar lands should be admissible. Offers to buy or sell similar lands are not admissible. Sales to one having the power to condemn should not be admitted unless it is affirmatively shown that the sales were not made under threat of condemnation proceedings. Even in instances where it would be admissible otherwise, the relation between the lands must be such that the general physical characteristics are reasonably similar, the location of the land sold must be sufficiently close to the land condemned so as to indicate the market value of the latter, and the time of the sale and condemnation must be sufficiently close so that the sale will not lose its probative quality due to a change of market value. Similarity in characteristics, location and time must be affirmatively shown by the party seeking admission of the evidence.

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