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Private Law: Expropriation

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raised on the merits and disposed of in the trial court.[98] They are not discussed here as the court's decision rested on the exception and no issues on the merits were resolved.

OTHER DECISIONS

Several other noteworthy decisions were rendered by the Louisiana courts during the 1961-62 term.[99] However, they are not discussed in this symposium because they either have been[100] or will be the subjects of treatment in other issues of this *Review*. In addition to *Davis v. Laster*[101] two others of the more important of these cases, *Odom v. Union Producing Co.*[102] and *Pierce v. Atlantic Refining Co.*[103] will be treated in future issues.

EXPROPRIATION

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In 1954, pursuant to authority granted by a 1948 constitutional amendment, the legislature authorized the Department of Highways to file a "declaration of taking" and thus to take possession and title of property for highway purposes prior to a final judgment fixing value in expropriation proceedings.[1]

98. Obviously this commentary has dealt only with the problem whether there was a fixed and certain sum involved. If the court had decided that a liquidated claim was presented, rather complex problems as to the legal relationship arising from the appointment of a unit operator by the Commissioner of Conservation would have been presented for decision. On the merits, defendant was contending that it had paid the unit operator for all of the production from the well and was therefore freed of any obligation to plaintiff. There is some question whether defendant could pay the unit operator appointed by a conservation order and thus relieve itself of any obligation to pay plaintiff for its just and equitable share of production directly.

99. Odom v. Union Production Co., 243 La. 48, 141 So. 2d 649 (1962); Melancon v. Cheramie, 138 So. 2d 138 (La. App. 1st Cir. 1962); Pierce v. Atlantic Refining Co., 140 So. 2d 19 (La. App. 3d Cir. 1962); Namie v. Namie, 134 So. 2d 572 (La. App. 2d Cir. 1961).

100. Melancon v. Cheramie, *supra* note 99, is considered in the student Comment, 23 LA. L. REV. 106, 111-16 (1962), and Namie v. Namie, *supra* note 98, is considered in the student Note, 22 LA. L. REV. 867 (1962).

101. 242 La. 735, 138 So. 2d 558 (1962).

102. 243 La. 48, 141 So. 2d 649 (1962).

103. 140 So. 2d 19 (La. App. 3d Cir. 1962).

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1. LA. R.S. 48:441-460 (Supp. 1962). This was pursuant to express constitutional authority. LA. CONST. art. VI, § 19.1, as amended in 1948.

In *State v. Bradford*[2] the department sought to use this procedure to obtain a servitude on the defendant's land to excavate dirt which was to be used on a highway project located about 2200 feet away. The excavation would result in what is known as a borrow pit, 8 to 10 feet deep, extending over 14.97 acres of the defendant's land.

The defendant contended that the 1948 constitutional amendment and the legislative act adopted pursuant to its authority limited the "quick taking" procedure to "highway purposes" and that this procedure could not be employed to obtain a borrow pit. The defendant contrasted the language of the general expropriation act[3] which expressly authorized expropriation of "land from which earth can be obtained," with the language of the 1954 constitutional amendment and its implementing legislation which authorized the taking of property "for highway purposes."

On rehearing, the court held that the "quick taking procedure" could be employed to take any property needed for highway purposes, whether or not the property taken is part of the highway right of way. The constitutional amendment and statute are both procedural in nature and they merely authorize another method by which to expropriate property which the state is authorized by substantive law to take.[4]

The courts of appeal continued to be confronted with expropriation cases. In most of these the principal question was the determination of the value of the land expropriated, under the particular circumstances of each case, and these cases require no comment.

The Court of Appeal for the Third Circuit held that a judgment in another case involving other parties but dealing with property of similar character in the same neighborhood as the subject property is admissible as evidence of value.[5]

SERVITUDES

Pipe line companies have begun to seek so-called rights-of-way fifty feet in width because of the size of the equipment now

2. 242 La. 1095, 141 So. 2d 378 (1962).
3. LA. R.S. 48:222 (1950).
4. Justices Hamiter, Hamlin, and Summers dissented.
5. United Gas Pipe Line Co. v. Nezat, 136 So. 2d 76 (La. App. 3d Cir. 1961), cert. denied, Feb. 19, 1962.

used in constructing and maintaining their lines. In *Texas Eastern Transmission v. Terzia*,[6] the Court of Appeal for the Second Circuit held that the expropriating company failed to establish the necessity of a servitude fifty feet in width, and permitted it to expropriate only thirty feet.[7] The court said that "the rights of ingress and egress, which are inherent in the use of the servitude granted, would authorize plaintiff to enter upon and use additional necessary areas subject to the co-existing rights of defendant to claim damages occasioned thereby"[8] if the need arose to use machinery of such size that it could not be accommodated in the narrower servitude.

INSURANCE

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The total volume of insurance litigation, as usual, was great. The cases presented a number of interesting questions. The comments that follow cover the most significant.

The Supreme Court held that an injured automobile passenger having received payment under the medical expense provisions of a liability policy on the vehicle was not entitled again to recover the same expenses in a tort action against the insurer.[1] To require an insurer to pay the same medical expenses twice under one policy without a definite manifestation of such an intention would seem clearly inadmissible, which, in substance, was the position taken by the court. It was observed that the ruling does not apply to a case where the injured person is paid medical expenses under a separate contract between him and his own insurer.

In similar vein the First Circuit Court of Appeal, overruling a prior decision found to be in conflict with a decision of the Supreme Court, held that recovery by a wife for personal injuries and a husband for medical expenses could not exceed the stated limit of a liability policy.[2]

6. 138 So. 2d 874 (La. App. 2d Cir. 1962).
7. *Cf.* Texas Pipe Line Co. v. Barbe, 229 La. 191, 85 So. 2d 260 (1955).
8. Texas Eastern Transmission Corp. v. Terzia, 138 So. 2d 874, 877 (La. App. 2d Cir. 1962).

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1. Gunter v. Lord, 242 La. 943, 140 So.2d 11 (1962).
2. Guarisco v. Swindle, 132 So.2d 643 (La. App. 1st Cir. 1961).