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Public Law: Expropriation

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EXPROPRIATION

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AUTHORITY TO TAKE

The distinction between expropriation and appropriation continues to be an important one since there has been no legislative action requiring payment of more than the assessed value for lands taken for levee construction under circumstances qualifying the taking as an appropriation.[1] In the absence of legislative action the courts, however, have continued to narrow the circumstances in which such partially uncompensated takings can occur. In *Stevenson v. Board of Levee Commissioners,*[2] the court decided that to qualify for appropriation the property must not only have been riparian when separated from the public domain and the taking within the range of the reasonable necessities of a situation produced by the forces of nature, unaided by artificial causes, but the taking for levee construction also "must be necessary for the control of flood waters from the river to which the land taken is riparian."[3] The additional gloss on article 665 of the Civil Code was inferred from a holding of the Louisiana Supreme Court in 1959 that to be "within the range of the reasonable necessities of the situation" there must be a showing that the purpose for which the property was taken was related to control of the flood waters of the river to which the lands taken were riparian.[4] In the instant case the levee construction was intended to hold off backwaters from several streams, not just backwaters from the stream to which the lands taken were riparian; thus the taking was deemed not an appropriation but an expropriation for which the owner must be compensated at the fair market value of the land involved.[5]

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1. The way was opened for the payment of just compensation by LA. CONST. art. VI, § 42, which states that levee takings are to be paid for "as provided by law."
2. 353 So. 2d 459 (La. App. 3d Cir. 1977).
3. A. K. Roy, Inc. v. Board of Comm'rs, 237 La. 541, 111 So. 2d 765 (1959).
4. *Id.* at 543, 111 So. 2d at 768.
5. 353 So. 2d at 460-61.

The idea of limiting the power of the public authorities to compel uncompensated contributions to the general welfare via the police power is not subject to even-handed application, however, even within the same appellate jurisdiction. In *McPherson v. Catahoula Parish Police Jury*,[6] there were no similar comforting restraints imposed upon the taking of a new servitude of public road from a riparian owner as authorized by article 707 of the Civil Code. Not only was the riparian owner required to yield a new servitude for the one eroded by the river, but he was required to provide, without adequate compensation, a servitude twice the width of the old one. While prior supreme court jurisprudence had already discarded the limitation that such uncompensated takings be for a road or passage incident to the nature, navigable character, or use of the stream,[7] a new servitude for general road purposes might well have been held to be subject to adequate compensation, at least as to the land taken which exceeded the area of the existing servitude, as the dissent suggested. Special damages such as damages to crops suffered as an incident to the new construction were, however, held compensable.[8]

While the authority to take property and property rights for controlled-access facilities and service roads is clear under the highway quick-taking statute,[9] the agency must be punctilious in its description of what is taken. Thus, in *State v. Trichel*,[10] the court was unwilling to imply a taking of access rights from a tract abutting an access road where such an outlet was not specifically included in the court order of taking. The case was remanded for further proceedings, including fixing any severance damage incident to loss of access by the remainder tract.[11]

DAMAGES

The new constitution significantly expanded the concept

6. 358 So. 2d 685 (La. App. 3d Cir. 1978).
7. Hornsby v. State, 241 La. 989, 996-97, 132 So. 2d 871, 874 (1961).
8. 358 So. 2d at 688.
9. LA. R.S. 48:301-04 (1950).
10. 348 So. 2d 1260 (La. App. 2d Cir. 1977).
11. *Id.* at 1262.

of compensation by adding to the expropriation provision the requirement that "the owner shall be compensated to the full extent of his loss . . . ."[12] The phrase has not been interpreted by the Louisiana Supreme Court nor have additional damages been awarded by reason of these words. Two appellate courts, however, have announced that they accept the phrase as intended to enlarge the scope of recovery by an owner. Specifically, one court noted in *State v. Constant,*[13] "the provision envisions recovery for business losses, moving expenses and other intangibles in a proper case and upon adequate proof of such losses."[14] Another appellate court, in *State v. Champagne,*[15] considered the "intent of the redactors of the 1974 constitution to be that once the landowner has received compensation in an amount sufficient to place him in as good a position pecuniarily as he would have been, had his property not been taken, the landowner has received compensation 'to the full extent of his loss.'"[16]

In safeguarding the public fisc against unnecessary awards in expropriation cases, dedication, either statutory, by declaration, or by informal act, plays an important role. In *Namie v. State,*[17] the state countered a claim for damages for trespass in conjunction with the construction of drainage facilities with the argument that there had been no trespass since the area had already been dedicated. The state's argument was rejected on the ground that, while a plat showing the alleged road and right of way was introduced in evidence, the actual road was not located as per the plat; the owner's deed, which indicated no dedication of a right of way but only the paved surface of the road as the monument for the surveyor's call, was deemed to govern and to support the claim of damages for trespass.[18] In *City of New Orleans v. Giraud,*[19] the location of a zoning line

12. LA. CONST. art. I, § 4.
13. 359 So. 2d 666, 672 (La. App. 1st Cir. 1978).
14. *Id.* at 672.
15. 356 So. 2d 1136 (La. App. 3d Cir. 1978).
16. *Id.* at 1140.
17. 353 So. 2d 1095 (La. App. 2d Cir. 1978).
18. *Id.* at 1097-99.
19. 346 So. 2d 1113 (La. App. 4th Cir. 1977).

demarcating residential from commercial usage was crucial to the determination of severance damages as well as the award for land taken. The city appraiser located the zoning line on a point to point, or monument to monument, basis whereas the owner's appraiser used a scale method and relied on the distances dictated by the zoning map; the latter method resulted in a substantial enhancement of the commercial area affected. The court was persuaded that the scale method was more in keeping with the zoning practice of following street right-of-ways; an ordinance would be required to correct any errors on the official zoning map.[20] In *State v. Traina,*[21] the state sought a reduction of an award for severance damages by invoking a recent statute[22] specifying the dimensions of right of way in informal acquisitions from local bodies where there was no previous record of dedication. The 1976 statute was not given retroactive effect, however, since the court held that it was not clearly remedial or procedural in nature.

In the *Giraud* case the taking included deprivation of access to a substantial amount of property frontage, and severance damages were claimed to provide for other means of access to the land; such "cost to cure" damages were limited to the value of the property prior to taking, thus avoiding an award of damages in excess of 100 percent of the value of the property.[23] The Third Circuit also recognized the "cost to cure" principle in *State v. Alexandria Volkswagen, Inc.,*[24] but rejected as double compensation a claim for damages necessary to *restore* parking spaces which had already been paid for as improvements taken in the expropriation.[25]

The state may also minimize severance damages, although not an award for taking, by proving the creation of special benefits by an improvement; there may not, however, be any transference of such benefits. Thus, in *State v. A. Wilbert's*

20. *Id.* at 1116.
21. 347 So. 2d 55 (La. App. 2d Cir. 1977).
22. LA. R.S. 48:220.1 (Supp. 1976).
23. 346 So. 2d at 1119.
24. 348 So. 2d 176 (La. App. 3d Cir. 1977).
25. *Id.* at 178-79.

Sons Lumber and Shingle Co.,[26] reduction of severance damages to one tract was successfully resisted by showing that the special benefits sought to be applied inured only to a second tract and that two tracts separated by a bayou were not in the requisite single use essential to treatment as a unit.[27] An intervening lessee made no claim to lease advantage but only to damages for the state's failure to restore a fence; the claim was rejected as relating only to damage to the lease, not to the subject tract, hence a claim in tort which must be separately litigated.[28] On the other hand, in *State v. Turpin*,[29] special benefits were readily recognized to each of two tracts, which resulted from a taking which split one land-locked tract into two portions, because the taking was for a highway which provided frontage on a paved highway for the two tracts with a resultant substantial increase in market value as "suburban acreage" rather than rural pasture land.[30] The burden of proving special benefits must, of course, be fully carried by the expropriator. An upward adjustment in a remainder merely because it is within the quadrant of an interchange may be dismissed as arbitrary unless, as was noted in *State v. Anderson*,[31] the expropriator satisfactorily proves that the remainder within the quadrant is now superior to other competing sites in the area in volume of traffic, availability to motorists leaving the expressway, visibility to motorists approaching the exit ramp, and accessibility to and from the expressway and to nearby population centers.[32]

In *State v. Country Club Acres, Inc.*,[33] severance damages were eliminated in a taking from a subdivision when the court was persuaded that two remainders could be recombined into a lot as attractive as those untouched by the taking. The owner's appraiser fell into the rather egregious error of giving

26. 346 So. 2d 842 (La. App. 1st Cir. 1977).
27. *Id.* at 844-45, *citing* State v. Cefalu, 288 So. 2d 332 (La. 1974).
28. *Id.* at 845-46, *citing* State v. Mouledous, 199 So. 2d 185 (La. App. 3d Cir.), *cert. denied*, 250 La. 934, 199 So. 2d 927 (1967).
29. 348 So. 2d 135 (La. App. 3d Cir. 1977).
30. *Id.* at 137.
31. 356 So. 2d 1086 (La. App. 2d Cir. 1978).
32. *Id.* at 1089.
33. 348 So. 2d 138 (La. App. 3d Cir. 1977).

an opinion that a lot which had been diminished in size by seven and one-half percent was thereby damaged to a similar degree in remainder value. The court thought it "double compensation" to give judgment for an award and damages of the same amount; yet diminishing a lot so as to render it no longer salable as a full-sized lot would seem to be clearly compensable in some amount as an addition to an award for the area actually taken.[34]

As a general rule, when there has been no taking of property, no compensation may be had for damage caused by traffic regulation, since this is usually termed an exercise of the police power; however, where a portion of the property has been taken, as for a street-widening and construction of a median divider, damages caused by the resulting limited access will be awarded.[35] Thus, it was held, in *State v. Hoyt*,[36] that damages must a fortiori be awarded where a street was not only widened but also rendered one-way, with traffic in the opposite direction channelled over a street some distance away from the subject service station tract which was rendered substantially less accessible.

VALUATION

No reversible error was deemed to have occurred in *State v. Brannon*,[37] by virtue of the trial court's acceptance of an appraisal based on one comparable sale, where the transaction used was deemed "more reasonably and factually applicable" than other sales in evidence. Nor was there error in relying upon sales made after the taking "as a check on the before taking sales used as comparables."[38]

State v. Dyess[39] is illustrative of an astute, though unsuccessful, attempt to strengthen a claim for a larger award by utilizing new procedural safeguards surrounding the taking of

34. M. DAKIN & M. KLEIN, EMINENT DOMAIN IN LOUISIANA 98 (1970).

35. *Id.* at 125. *See also* M. DAKIN & M. KLEIN, *supra* note 34, at 47 n.365.1 (Supp. 1978).

36. 357 So. 2d 1189 (La. App. 3d Cir. 1978).

37. 348 So. 2d 1301 (La. App. 3d Cir. 1977).

38. *Id.* at 1303.

39. 350 So. 2d 1304 (La. App. 3d Cir. 1977).

a default judgment.[40] Where, at the time of original taking, the possible construction of a shopping mall was mere rumor and was deemed not to affect value, counsel allowed his reconventional demand for a higher award to lie unprosecuted for five years; upon dismissal without prejudice, and presumably within ten days of notice from the state that it was moving for judgment, counsel refiled his reconventional demand for an award based on the higher values posited by the actuality of the mall development and was permitted to try the issue.[41] In *Dyess* there was no issue of rezoning; however, where the state seeks to counter severance damages to a remainder with an opinion that the tract could be rezoned commercial, the opinion will be rejected unless there is evidence to buttress it, as was not the case in *State v. C. F. Breaux Investment Co.*[42]

State v. Chicago, Rock Island and Pacific Railroad Co.[43] involved a taking of a railroad right of way; the court noted that "[e]stablishing just compensation for a taking of special use property is difficult . . . [and] no single exclusive approach . . . must be applied by appraisers or by the court."[44] So saying, the court affirmed the trial court's acceptance of commercial value as highest and best use with a discount of almost fifty percent because of the presence of the railroad tracks.[45] What might seem a more equitable approach was used for a similar taking in *State v. New Orleans Terminal Co.*,[46] where the value was fixed on the basis of the highest and best use of the land for which the railroad would have to pay if *it* were acquiring the land by expropriation.

PROCEDURE, EVIDENCE, BURDEN OF PROOF

The private expropriator continues to have more cost-free flexibility in changing plans for expropriation than does the

40. LA. R.S. 48:452 (Supp. 1978).

41. *See* State v. Ott, 262 So. 2d 397 (La. App. 1st Cir. 1972). For comments on *State v. Ott* and LA. R.S. 48:452 (Supp. 1974) and 48:452.1 (Supp. 1974), see M. DAKIN & M. KLEIN, *supra* note 34, at 101 n.172.1 and 104 n.213.2 (Supp. 1978).

42. 351 So. 2d 1321 (La. App. 1st Cir. 1977).

43. 357 So. 2d 1224 (La. App. 2d Cir. 1978).

44. *Id.* at 1225.

45. *Id.*

46. 319 So. 2d 568 (La. App. 4th Cir. 1975).

public agency. In *Louisiana Intrastate Gas Corp. v. LeDoux,*[47] the expropriator was held not liable for attorney fees where proceedings were abandoned because construction of a proposed pipeline became unnecessary. Neither the 1972 statute[48] providing attorney fees in the event of abandonment by a public agency (which the court refused to extend by analogy) nor the language of the 1974 constitution, "that the owner shall be compensated to the full extent of his loss" but which applies only when property is taken or damaged, was deemed to provide relief.[49] On the other hand, where there *is* a taking and no tender of the true value of the property has been made in connection therewith, the court will, as in *Louisiana Intrastate Gas Corp. v. McIntire,*[50] award reasonable expert fees, "based on the relative usefulness of . . . testimony";[51] but preparation time spent in consultation with counsel will not be compensated.[52] However, in *Louisiana Resources Co. v. Fiske,*[53] the absence of a tender was not determinative where the evidence established that written offers in excess of the court awards were made but tender would not have been accepted by the landowners. The court noted approvingly that "jurisprudence in our state conforms with the universal rule of law to the effect that a formal tender is not required where it would be of no avail. . . . [T]he law does not require anyone to do a vain and useless thing."[54] Since 1974, the legislature has also provided that, in addition to conventional costs, including the fees of experts, failure to make an adequate tender may support an

47. 347 So. 2d 4 (La. App. 3d Cir. 1977).

48. LA. R.S. 19:201 (Supp. 1978).

49. LA. CONST. art. I, § 4.

50. 349 So. 2d 1331 (La. App. 1st Cir. 1977).

51. *Id.* at 1333. *See* Louisiana Intrastate Gas Corp. v. Guidry, 357 So. 2d 830, 831-32 (La. App. 3d Cir. 1978), where psychologist's fee, as a part of costs, was denied because the testimony was not mentioned in the trial court's reasons for judgment, a circumstance which was deemed tantamount to a denial of the demand.

52. 349 So. 2d at 1333.

53. 356 So. 2d 110 (La. App. 3d Cir. 1978).

54. Louisiana Highway Comm'n v. Bullis, 197 La. 14, 18, 200 So. 805, 806 (1941). *See* South Central Bell Telephone Co. v. Marsh Investment Corp., 344 So. 2d 6, 7-8 (La. App. 4th Cir. 1977), *commented on in* M. DAKIN & M. KLEIN, *supra* note 34, at 105 n.227.3 (Supp. 1978).

award of attorney fees to the landowner.[55] Thus, in *Claiborne Electric Cooperative, Inc., v. Garrett,*[56] it was held that, without doing violence to the statute, "landowners are entitled to reasonable attorney fees in any case in which the highest amount offered is less than that obtained through . . . judicial assertion of their rights."[57] However, in *Louisiana Intrastate Gas Corp. v. Guidry,*[58] where the only significant issue was severance damages, the use of "may" in the statute warranted denial of the fee as within the discretion of the court.

The state has been held rather rigidly to the rule that amendments to pleadings must be in writing and that evidence of lesser severance damages than contained in the declaration of taking will be inadmissible as an unpermitted enlargement of the pleadings.[59] However, it was held, in *State v. Smith,*[60] that where evidence of value exceeding the amount prayed for by an owner is admitted *without objection,* the pleadings may be deemed expanded to allow the award established by such evidence.[61] On the other hand, such informal amendment is strictly limited and if the evidence introduced without objection is not specifically offered in proof of a larger award but only in proof of severance damages, such evidence will not be deemed to expand the prayer for relief as to the award.[62]

Two recent cases juxtapose the Louisiana Constitution and the Civil Code as alternative sources of jurisdiction in inverse condemnation cases. In *Key v. Louisiana Department of Highways,*[63] the court found a cause of action directly in the constitution[64] for the recovery of damages suffered when the expropriator, in conjunction with a taking for street widening, rearranged drainage on a dominant estate. The drainage servi-

55. LA. R.S. 19:8 (Supp. 1978).
56. 357 So. 2d 1251 (La. App. 2d Cir. 1978).
57. *Id.* at 1258.
58. 357 So. 2d 830 (La. App. 3d Cir. 1978).
59. *See* LA. CODE CIV. P. art. 852 and State v. Mayer, 257 So. 2d 723, 737-38 (La. App. 1st Cir. 1971).
60. 353 So. 2d 322 (La. App. 1st Cir. 1977).
61. *Id.* at 324. *See* LA. CODE CIV. P. art. 1154.
62. State v. Terrebonne, 349 So. 2d 936 (La. App. 1st Cir. 1977).
63. 357 So. 2d 1230 (La. App. 2d Cir. 1978).
64. LA. CONST. art. I, § 4.

tude was thereby rendered substantially more burdensome to the subservient estate. The resulting injury was compensable since the property was damaged for a public purpose;[65] a claim for mental pain and suffering was rejected as an element of damage not compensable in an inverse condemnation suit.[66] In another circuit, in *Prentice Oil & Gas Co. v. Caldwell,*[67] the theory of the cause of action was that the expropriator and the adjacent landowner, in laying a gas transmission line, had made a "work" which caused damage to the neighbor;[68] the validity of the action was conceded but the claimed damage to agricultural usage was deemed not proven, and alleged future subdivision use, as to which a gas line might have been damaging, was speculative.[69] In *State v. Smith,*[70] the issue might have been raised, but was not, whether cumulation of actions, as permitted by article 591 of the Code of Civil Procedure, should be used to eliminate the need for some inverse condemnation suits. The landowner claimed severance damage on several grounds, one of which was that the expropriator had diverted a river channel so as to deprive some of his remainders of river frontage; the court found that the diversion damage resulted from an adjacent taking and must be litigated separately on the theory that "in an expropriation suit, the issue must be confined to ascertaining the market value of the property and the damage growing out of the expropriation . . . and nothing else."[71]

In *State v. Bland,*[72] the court recognized that while severance damages should usually be proven from comparable sales, in the absence of such data severance damages may be proven by well-grounded opinion as to the percentage loss in value which is attributable to the taking.[73] The burden of proof is,

65. 357 So. 2d at 1233, *citing* LA. CIV. CODE art. 660.
66. *Id.* at 1234.
67. 355 So. 2d 1327 (La. App. 1st Cir. 1978).
68. *See* LA. CIV. CODE art. 667.
69. 355 So. 2d at 1330-33, *citing* LA. CIV. CODE art. 667 as basis for judgment.
70. 353 So. 2d 322 (La. App. 1st Cir. 1977).
71. *Id.* at 325, *citing* Louisiana Highway Comm'n v. De Bouchel, 174 La. 968, 142 So. 142 (1932).
72. 355 So. 2d 283 (La. App. 2d Cir. 1978).
73. *Id.* at 285.

nonetheless, on the landowner to prove severance damages by a preponderance of the evidence where the issue is contested. Therefore, mere unsupported opinion will not prevail, as seen in *State v. Ruckstuhl,*[74] where the state introduced evidence to show that reduction of a residential setback left the subject residence still exceptionally well-placed and undamaged; the landowner's unsupported opinion to the contrary was not persuasive.

Last term the Louisiana Supreme Court had occasion to consider the extent of judicial examination of the issue of public purpose and necessity when it is raised in a private corporation taking for a transmission line right of way. In *Louisiana Power & Light Co. v. Caldwell,*[75] it was urged that the trial court had erred by requiring the landowner to carry the burden of proof on the necessity of a particular location for a right of way. However, analysis of the record convinced the First Circuit Court of Appeal that the requisite burden had in fact been carried by the expropriator since the landowner introduced no evidence to counter the plaintiff's choice of location and only alleged, without proof, that the decision had been made arbitrarily, capriciously, and in bad faith. In these circumstances the court refused to disturb or upset the expropriator's selection of a route.[76] The Louisiana Supreme Court,[77] however, ruled that the clear wording of the statute authorizing expropriation for electric lines "evinces a legislative intent to require electric power companies which seek to expropriate land to consider the convenience of the landowner as an element of route selection. . . . [T]he statute commands that the improvements for which property is expropriated shall be so located as not to interfere more than is necessary with the convenience of the landowners";[78] a trial court must therefore not approve an expropriation unless it determines from the evidence that this is the case. Since the expropriator's evidence established only the need for the electric line with speculative

74. 348 So. 2d 701, 703 (La. App. 1st Cir. 1977).
75. 353 So. 2d 371 (La. App. 1st Cir. 1977).
76. *Id.* at 374-75.
77. Louisiana Power & Light Co. v. Caldwell, 360 So. 2d 848 (La. 1978).
78. *Id.* at 852.

opinion as to necessity for a location contrary to the convenience of the landowner, the court remanded the case to the trial court for a determination of the "convenience of the landowner" issue as made on amended pleadings by the expropriator and upon appropriate denial by the landowner;[79] *certiorari* was denied for a companion case where another panel of the same court of appeal had substantially applied the holding of the supreme court, and the issue of the convenience of the landowner had been adequately litigated.[80]

In an earlier case, *Louisiana Resources Co. v. Stream*,[81] another of the circuit courts, in a gas right of way taking, rejected an attack on what was termed "the right of the expropriator to choose . . . [a] route across . . . [the landowner's] property."[82] The landowner had argued that, where feasible, a gas line right of way "should be located over lands belonging to those who have a direct interest," arguing further that increased costs of such a line were irrelevant. The court, relying upon, among other cases, *Texas Eastern Transmission Corp. v. Bowie Lumber Co.*,[83] ruled that it was well-established in the jurisprudence that a grantee of the power of eminent domain had the right to determine the location and route of the improvement and that the determination would not be interfered with by the courts "if . . . made in good faith and . . . not capricious or wantonly injurious, or . . . beyond the privilege conferred by the statute."[84] Despite the holding in *Louisiana Power & Light Co. v. Caldwell*,[85] it is unlikely that such decisions will be disturbed since, with respect to gas line right of way takings,[86] there is no protective clause such as that provided by the legislature for electric transmission line right of way takings that the taking may not interfere "more than is

79. *Id.*

80. Louisiana Power & Light Co. v. Caldwell, 353 So. 2d 1343 (La. App. 1st Cir. 1977), *cert. denied*, 354 So. 2d 1045 (La. 1978). *See* Claiborne Electric Coop., Inc. v. Garrett, 357 So. 2d 1251 (La. App. 2d Cir. 1978).

81. 351 So. 2d 517 (La. App. 3d Cir. 1977).

82. *Id.* at 518.

83. 176 So. 2d 735 (La. App. 1st Cir. 1965).

84. *Id.* at 740.

85. 360 So. 2d at 850-53.

86. LA. R.S. 19:2(5) (Supp. 1970).

necessary, with the convenience of the landowner."[87]

In *State v. Gormley,*[88] the trial court took judicial notice of evidence from its own criminal case docket that a city neighborhood harbored unsavory characters; it concluded that the remainder areas suffered severance damage as they would be rendered more accessible to such characters by virtue of the street improvement. However, on appeal other aspects of the improvement were deemed to confer enough special benefit to preclude severance damages, and the state's objection that it had no adequate opportunity to rebut such evidence was only noted as meritorious.[89] On the other hand, in *State v. Terrebonne*[90] the scarcity of residential sites in a coastal area was deemed a matter of such common knowledge that judicial notice could properly be taken thereof.[91] Where it is clear, as it was in *Parish of East Baton Rouge v. Thomas,*[92] that the trial court based its final decision, not upon personal knowledge, but upon the evidence presented at the trial, the presence of a statement in the reasons for judgment based on unsupported personal opinion will not be reversible error. The court also noted that while the jurisprudence respecting the role and function of the trial court does not require acceptance or rejection of expert opinion in toto, it also does not preclude it; where the status of other evidence warrants such procedure, acceptance and reliance thereon is permissible.[93] The trial court is also free, by virtue of its responsibility to evaluate and accord proper weight to expert testimony, to determine damages in an amount to which no witness has testified, but it will not be permitted to make an award, on the basis of personal opinion, in excess of the highest value placed upon a tract by any expert in the proceedings.[94] Thus, in *State v. Natchitoches Country*

87. LA. R.S. 19:2(7) (Supp. 1970).
88. 357 So. 2d 859 (La. App. 3d Cir. 1978).
89. *Id.* at 862.
90. 349 So. 2d 936 (La. App. 1st Cir. 1977), noted in text at note 62, *supra.*
91. *Id.* at 939.
92. 346 So. 2d 364 (La. App. 1st Cir. 1977).
93. *Id.* at 367.
94. *See* M. DAKIN & M. KLEIN, *supra* note 34, at 398-99 (Supp. 1970) & 126 n.241 (Supp. 1978).

Club,[95] "knowledge of the trial court" as to value of the land was not permitted to govern, and the award was reduced to the highest value as to which there was expert testimony.[96]

95. 348 So. 2d 141 (La. App. 3d Cir. 1977).

96. *Id.* at 143. *See also* State v. Tate, 355 So. 2d 1087, 1089 (La. App. 3d Cir. 1978).