

Bailey Vs. Anderson

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Court : US Supreme Court

Decided On : Nov-05-1945

Appeal No. : 326 U.S. 203

Appellant : Bailey

Respondent : Anderson

Judgement :

Bailey v. Anderson - 326 U.S. 203 (1945)

U.S. Supreme Court Bailey v. Anderson, 326 U.S. 203 (1945)

Bailey v. Anderson

No. 49

Argued October 15, 1945

Decided November 5, 1945

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APPEAL FROM THE SUPREME COURT OF APPEALS OF VIRGINIA

SYLLABUS

1. Section 1969j of the Virginia Code of 1942 does not deny the due process guaranteed by the Fourteenth Amendment, as applied to a landowner upon whose land the state highway commissioner entered and constructed a highway in advance of the appointment of commissioners and before they could view the land for the purpose of fixing its fair value upon condemnation, since the landowner had full opportunity for a hearing before the commissioners, and their award was subject to a judicial review upon which the award could be set aside if plainly wrong or unsupported by the evidence. P. [326 U. S. 205](#) .

2. The question of the constitutionality of a claimed denial to the landowner of interest on the value of the property from the time of the taking is not properly presented upon the record in this case, since it does not affirmatively appear that appellant raised that question on the record, or that the state supreme court passed on it. P. [326 U. S. 206](#) .

Dismissed.

Appeal from a Judgment denying a petition for a writ of error to review a decree which confirmed an award of compensation in a condemnation proceeding.

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MR. CHIEF JUSTICE STONE delivered the opinion of the Court.

Appellee, State Highway Commissioner of Virginia, brought this proceeding in conformity to 1969j(1)-1969j(6) of the Virginia Code of 1942, to condemn appellant's land for use as a public highway. Acting under 1969j(4), appellee entered on the land and constructed the highway in advance of its condemnation. In the condemnation proceeding, begun in the circuit court within sixty days after the completion of the highway, the Commissioners, appointed and acting pursuant to 1969j(2), after viewing the land, and hearing evidence, made an award of \$1,500 for the land occupied by the highway, and of \$6,500 for damages "resulting to the adjacent or other property of the owner."

The Virginia Circuit Court confirmed the Commissioners' report, and, by its decree, directed that interest be paid on the amount of the award from the date of the decree. The Supreme Court of Appeals of Virginia, without opinion, denied appellant's petition for a writ of error. The case comes here on appeal, 237(a) Judicial Code, 28 U.S.C. 344(a), appellant assigning as error that 1969j(4) and 1969j(6), as applied to appellant, deny to him the due process guaranteed by the Fourteenth Amendment. On examination of appellant's jurisdictional statement, we postponed the question of our jurisdiction to the argument on the merits.

Appellant contends here, as he did in the state courts, that 1969j(4) infringes the asserted constitutional immunity by sanctioning appellee's entry upon the land and the alteration of its physical condition in advance of the appointment of the Commissioners and before they could

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view the land for the purpose of fixing its fair value upon condemnation. But it has long been settled that due process does not require the condemnation of land to be in advance of its occupation by the condemning authority, provided only that the owner have opportunity, in the course of the condemnation proceedings, to be heard and to offer evidence as to the value of the land taken. *Bragg v. Weaver*, [251 U. S. 57](#) , [251 U. S. 62](#) , and cases cited; *Joslin Mfg. Co. v. Providence*, [262 U. S. 668](#) , [262 U. S. 677](#) ; *Georgia v. Chattanooga*, [264 U. S. 472](#) , [264 U. S. 483](#) . Its value may be fixed by viewers without a hearing, after entry upon the land, if their award is subject to a review in which a trial upon evidence may be had. *Pearson v. Yewdall*, [95 U. S. 294](#) , [95 U. S. 296](#) ; *Backus v. Fort Street Union Depot Co.*, [169 U. S. 557](#) , [169 U. S. 569](#) ; *Bragg v. Weaver*, *supra*, [251 U. S. 59](#) , and cases cited; *North Laramie Land Co. v. Hoffman*, [268 U. S. 276](#) , [268 U. S. 284](#) -285.

Here, appellant was given full opportunity to be heard and to introduce evidence before the Commissioners. They could, upon the evidence submitted, take into account the alterations of the property after the taking and before the view; such was their duty under the statute. Their award is made subject to judicial review by

1969j(2), and, upon such review, may be set aside if plainly wrong or without support in the evidence. *Barnes v. Tidewater R. Co.*, 107 Va. 263, 266-268, 58 S.E. 594, 595-596; *Duncan v. State Highway Commission*, 142 Va. 135, 146-148, 128 S.E. 546, 549-550. In this we find no denial of due process, and appellant's contention presents no substantial constitutional question, as the authorities cited show.

Appellant also insists that the state court judgment failed to include in the award interest from the date of the occupation of his land by appellee; that the award thus denied to him just compensation for the land taken, in violation of the due process clause of the Fourteenth Amendment. See [Delaware, L. & W. R. v. Morristown](#),

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[276 U. S. 182](#) . Appellant's petition in the circuit court asked that the award include interest from the date of taking. The circuit court, without explanation, rejected his claim for interest. But, throughout the proceedings in the circuit court, appellant made no claim to interest on constitutional grounds, and made no attack on the constitutionality of the award or the court's decree because of the asserted denial of interest. Further, nothing appears in the record to indicate that the Commissioners' award of damages did not include the interest claimed. Appellee argues that the applicable statutes contemplate that the award shall include interest as compensation "for the damage and delay" from the time of the occupation of the premises to the date of the Commissioners' report and for such further time within which application may be made for judicial review, see *Richmond v. Goodwyn*, 132 Va. 442, 452-454, 112 S.E. 787; *Export Leaf Tobacco Co. v. Richmond*, 163 Va. 145, 155-156, 175 S.E. 753. Nothing appears to the contrary.

Appellant, for the first time, assailed on constitutional grounds the asserted denial of interest by his assignments of error in the state Supreme Court of Appeals. The assignments relating to interest failed to draw in question the constitutional validity of any statute as is required by 237(a) of the Judicial Code. The state Supreme

Court, by its order refusing the writ of error, declared that, upon consideration of the record, it was of opinion that the judgment below was "plainly right."

Inspection of the record does not show that, in denying the writ of error, the state court passed upon any constitutional question not raised or passed upon in the course of the proceedings below. Such appears not to be its practice. Rule 22 of the Rules of the Supreme Court of Appeals, 181 Va. lxxv; *cf. Ward Lumber Co. v. Henderson-White Mfg. Co.*, 107 Va. 26, 628, 629, 59 S.E. 476; *Bliss v. Spencer*, 125 Va. 36, 50, 99 S.E. 593; *Reynolds v. Adams*,

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125 Va. 295, 314, 99 S.E. 695. On this record, we cannot say that the interest claimed was not included in the award, or, if it was not, that the Supreme Court of Appeals of Virginia, by denying writ of error, passed upon any question of the constitutionality of such denial of interest not raised on the record or passed upon below. Unless this affirmatively appears upon the record brought here for review on appeal, this court is without jurisdiction of the appeal. *Jacobi v. Alabama*, [187 U. S. 133](#) , [187 U. S. 135](#) -136; *Mutual Life Ins. Co. v. McGrew*, [188 U. S. 291](#) , [188 U. S. 309](#) ; *Chicago, I. & L. R. Co. v. McGuire*, [196 U. S. 128](#) , [196 U. S. 131](#) ; see *Flournoy v. Wiener*, [321 U. S. 253](#) , [321 U. S. 262](#) -263, and cases cited.

The appeal must be dismissed for want of any properly presented substantial federal question.

Dismissed.

MR. JUSTICE JACKSON took no part in the consideration or decision of this case.