No. 11,821

In the United States Circuit Court of Appeals for the Ninth Circuit

Dawson County, Montana, appellant

v.

Mary Hagen, E. B. Clark, and Minnie R. Evans, on Their Own Behalf and on Behalf of All Bondholders of the Upper Glendive-Fallon Irrigation District of the State of Montana, and United States of America, appellees

and

Mary Hagen, E. B. Clark, and Minnie R. Evans, on Their Own Behalf and on Behalf of All Bondholders of the Upper Glendive-Fallon Irrigation District of the State of Montana, appellants

v.

Edna Yale, Allen W. Yale, and Ruby Yale, His Wife, and Ruth Peterson and Hans Peterson, Her Husband, The Scottish American Mortgage Company, Limited, United States of America, Dawson County and Prairie County, appellees

UPON APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA

BRIEF FOR THE UNITED STATES

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In the United States Circuit Court of Appeals for the Ninth Circuit

No. 11,821

DAWSON COUNTY, MONTANA, APPELLANT

v.

MARY HAGEN, E. B. CLARK, AND MINNIE R. EVANS, ON THEIR OWN BEHALF AND ON BEHALF OF ALL BONDHOLDERS OF THE UPPER GLENDIVE-FALLON IRRIGATION DISTRICT OF THE STATE OF MONTANA, AND UNITED STATES OF AMERICA, APPELLEES

and

MARY HAGEN, E. B. CLARK, AND MINNIE R. EVANS, ON THEIR OWN BEHALF AND ON BEHALF OF ALL BONDHOLDERS OF THE UPPER GLENDIVE-FALLON IRRIGATION DISTRICT OF THE STATE OF MONTANA, APPELLANTS

v.

EDNA YALE, ALLEN W. YALE, AND RUBY YALE, HIS WIFE, AND RUTH PETTERSON AND HANS PETTERSON, HER HUSBAND, THE SCOTTISH AMERICAN MORTGAGE COMPANY, LIMITED, UNITED STATES OF AMERICA, DAWSON COUNTY AND PRAIRIE COUNTY, APPELLEES

UPON APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The views of the district court are stated in its Decision and Order (R. 98–109), which has not been reported.

JURISDICTION

These are appeals by adverse claimants to a condemnation award, taken from a judgment entered September 4, 1947 (R. 98–109), on petitions for distribution. Notice of appeal was filed by appellant Dawson County on October 25, 1947 (R. 110–111); notice of cross-appeal was filed by appellants Hagen, et al., on December 4, 1947 (R. 115–117). Jurisdiction of the district court was invoked under the General Condemnation Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. sec. 257, and the Act of October 14, 1940, 54 Stat. 1119. The jurisdiction of this Court rests on section 128 of the Judicial Code, as amended, 28 U. S. C. sec. 225 (a).

QUESTION PRESENTED

So far as concerns this appellee, the only question presented is whether a void judgment against the United States should be modified to include interest.

STATEMENT

This is a proceeding brought by the United States under the Act of October 14, 1940, 54 Stat. 1119, 16 U. S. C. secs. 590y–590z–11 (R. 3), to condemn 5,788.21 acres of land in Dawson and Prairie Counties, Montana (R. 4–11). On March 27, 1944, the United States filed its amended complaint (R. 2–28) and declaration of taking, and deposited in court $32,-389.00 as estimated just compensation (cf. R. 89–90). On May 13, 1944, appellants Hagen et al. filed an answer claiming a lien on the property as bondholders of the Upper Glendive-Fallon Irrigation District (R.

28–42). On May 20, 1944, appellant Dawson County filed an answer and petition for distribution (R. 43–64) and reply to the answer and claim of the bondholders (R. 65–66), asserting tax title to the lands lying in Dawson County and asking distribution of $23,526.00 deposited in court as estimated just compensation for those lands.[1] On July 11, 1944, the trial court entered an order distributing $10,628.57 to Dawson County (R. 67–68). Commissioners were appointed and on October 1, 1945, they filed their report (R. 69–77), appraising the property, by tracts, at valuations totaling $32,389.00, of which $23,526.00 was for lands in Dawson County. No objection being made thereto, the court on December 5, 1945, entered its "Final Judgment in Condemnation" fixing the value of the property accordingly and declaring title to be vested in the United States (R. 78–90).

On June 25, 1946, Dawson County filed its petition for distribution of $12,897.43, the balance remaining in court attributable to lands claimed by the county (R. 91–93). On October 21, 1946, the bondholders filed a petition for distribution of $22,677.81 and for an order requiring Dawson and Prairie Counties to refund to the court $3,315.06 and $327.86, respectively, by which amounts the distributions already made to them were alleged to have exceeded their proper claims (R. 94–95). On September 4, 1947, the court entered its "Decision and Order" (R. 98–109) holding

[1] It was stipulated between Dawson County and the United States that the total value of the lands in Dawson County was $23,526.00 (R. 95–96). The county had previously given the United States an option to buy the lands at that price (R. 59–64).

that overpayments had been made to the counties as alleged and that the bondholders were entitled to payment thereof, and concluding (R. 109):

> Accordingly it is ordered and this does order that the Counties, Dawson and Prairie, return forthwith to the registry of the court the respective amounts above set forth as overpayments, and in default thereof, the proper authorities of the Government will be so advised, in order that proceedings may be commenced for the recovery of such overpayments; and in the meantime, under Section 258a judgment for the additional sum of $3,642.92, representing the overpayments, will be ordered, and is hereby ordered, entered against the United States, and distribution of the funds in the registry of the court will be made according to the foregoing decision. Exceptions are allowed counsel.

Notice of appeal was filed by Dawson County on October 25, 1947 (R. 110–111). On December 4, 1947, the bondholders filed their notice of cross-appeal (R. 115–117) and statement of points on cross-appeal (R. 118–119). In addition to conflicting claims of the counties and bondholders raised by the appeal and cross-appeal, the cross-appeal presents the contention by the bondholders that the United States should have been required to pay interest on the amounts overpaid to the counties (R. 119). That is the only point on either appeal that directly concerns the United States.

SUMMARY OF ARGUMENT

The final judgment in condemnation fixed just compensation at $32,389.00. That determined the

liability of the United States. Having paid that sum into court, the United States was not further concerned with the proceedings. The court was without jurisdiction to enter a further judgment against the United States, 21 months later, on proceedings for distribution. The purported judgment so entered against it was therefore void. An allowance of interest thereon would be likewise void, and so should not be ordered by this Court.

ARGUMENT

The judgment against the United States is void [2]

A judgment in condemnation, fixing just compensation for the property condemned, is a final judgment. After it is entered, the court retains jurisdiction only to make distribution of the award to the persons entitled thereto. *United States* v. *111,000 Acres of Land in Polk and Highlands Counties,* 155 F. 2d 683 (C. C. A. 5, 1946). When the United States deposited in court the amount awarded (R. 90), it discharged its entire liability; it was not concerned with the proceedings for distribution and would not have been a proper party thereto. *United States* v. *Dunnington,* 146 U. S. 338, 352 (1892). The court had no jurisdiction, in distribution proceedings, to enter further judgment against the United States. See *United States* v. *111,000 Acres of Land in Polk and Highlands Counties,* 155 F. 2d 683 (C. C. A. 5, 1946).

[2] Since the judgment is void, it does not affect the rights or liabilities of the United States, and proceedings to vacate it may be instituted at any time. *United States* v. *Turner*, 47 F. 2d 86, 88–89 (C. C. A. 8, 1931).

If the judgment of September 4, 1947 (R. 98–109), here appealed from, were to be regarded as a modification of the determination of just compensation made by the Final Judgment of December 5, 1945 (R. 78–90), it was beyond the jurisdiction of the court because not made during the same term of court or on a motion made during that term.[3] *E. C. Shevlin Co.* v. *United States,* 146 F. 2d 613, 616 (C. C. A. 9, 1944); *United States* v. *534.7 Acres of Land in Orange County,* 157 F. 2d 828, 831 (C. C. A. 5, 1946).

The judgment appealed from does not purport to be a modification of the former determination of just compensation; in fact, it is premised on the proposition that that determination was correct. Under that view, it is equally void. Consent alone gives jurisdiction to adjudge against the United States. *United States* v. *United States Fidelity Co.,* 309 U. S. 506, 514 (1940). By filing a declaration of taking, the United States consented to entry of judgment against itself for whatever might be found to be just compensation for the property taken. 40 U. S. C. sec. 258a. See *Catlin* v. *United States,* 324 U. S. 229, 241–242 (1945). It did not consent to entry of any different or greater judgment. Since the judgment of December 5, 1945, fixed just compensation for the property, and the amount so fixed was paid into court by the United States, the further judgment of September 4, 1947, was necessarily for a sum additional

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[3] Terms of court at Billings, where this case was tried (R. 2), begin on June 1 and December 15 of each year. Rules of the United States District Court for the District of Montana.

to just compensation. Such a judgment was beyond the jurisdiction of the court to enter. *United States* v. *534.7 Acres of Land in Orange County,* 157 F. 2d 828, 831 (C. C. A. 5, 1946); *United States* v. *Merchants Transfer & Storage Co.,* 144 F. 2d 324, 327 (C. C. A. 9, 1944).

II

The judgment against the United States should not be modified to include interest

The judgment against the United States being void, an award of interest would be void for the same reasons. In any event, the United States is not liable for interest except as expressly provided by contract or statute, or as part of just compensation. *Boston Sand Co.* v. *United States,* 278 U. S. 41, 47 (1928). No contract or statute supports appellants' claim for interest here, and, as already pointed out, this award cannot be considered one for just compensation, because the full just compensation adjudged was deposited in court by the United States on the date of taking.[4] Since the award of interest would be a nullity, just as the judgment appealed from is a nullity, this Court should not direct its allowance.

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[4] There is no merit to the suggestion of appellee bondholders (Br. 29) that the $3,642.92 was not "deposited in court" within the meaning of 40 U. S. C. sec. 258a because the deposit was disbursed by the court to the wrong parties. The duty to make distribution is on the court. A mistake by it can be corrected by appeal; it does not give any further right against the United States. *United States* v. *Certain Parcels of Land in Prince Georges County,* 40 F. Supp. 436, 443 (Md. 1941).

CONCLUSION

For the foregoing reasons, the judgment against the United States should not be modified to include interest.

Respectfully,

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