



1945

Our Supreme Court Holds

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Recommended Citation

(1945) "Our Supreme Court Holds," *North Dakota Law Review*. Vol. 22 : No. 4 , Article 4.
Available at: <https://commons.und.edu/ndlr/vol22/iss4/4>

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nishes round-trip transportation and provides meals and lodging at a very low rate (around \$50 per month). Many of the qualified civilian leaders already at work have, obviously, earned more than compensation of this order. The appeal of the assignment, therefore, is likely to be partly in the unusual experience it offers and partly in the opportunity it presents to advance the cause of peace.

OUR SUPREME COURT HOLDS

In *George Lineberg, Administrator, Respt., vs. Board County Commissioners, Benson County, et al., Appls.*

That where, on an appeal from a decision by a Board of County Commissioners in a proceeding instituted before such Board by the state highway commissioner for ascertainment and determination of damages resulting from the taking of land for highway construction, trial by jury is waived and the issues of fact are tried to the district court without a jury, the findings of fact as to the value of the land taken and consequential damages are entitled to appreciable weight on an appeal to the Supreme court, where a trial anew is demanded in the Supreme court.

That where part of a larger tract of land is taken for public use in the construction of a highway no deduction may be made, from the amount of compensation which the owner of the land is entitled to recover for damages resulting to the residue of the larger tract by reason of the severance of the same from the tract taken, for such general benefits as will accrue to and be received by the whole community, and which will flow to the public in general from the highway improvement.

That where a highway is established across a farm on which there is a set of permanent farm buildings, which farm including the buildings thereon constitutes, and is maintained and operated as, a single unit; and a part of such farm is taken for highway purposes and the buildings remain upon the part of the land not taken, the land and the buildings upon it constitute one piece of property, and the value of the farm before the severance is to be ascertained by considering the property as a whole.

That where a Board of County Commissioners in assessing the damages resulting from the taking of a part of a tract of land for highway purposes made an allowance for a fence, and on appeal to the district court neither of the parties challenge the correctness of such allowance and by their conduct imply that the allowance so made by the Board of County Commissioners is satisfactory, they cannot be heard to say in the Supreme Court that the district court erred in including in the compensation adjudged to be due to the owner of the land the amount of the allowance made for the fence by the Board of County Commissioners.

That on appeal to the district court from a decision of a Board of County Commissioners made in a proceeding instituted on the petition of the state highway commissioner for the ascertainment and determination of damages resulting from the taking of land for highway purposes, the members of the Board of County Commissioners are not proper parties respondent and judgment may not be rendered against them. Judgment may be rendered alone against the state highway commissioner that he "pay, or cause to be paid" the award of damages "from the state highway fund, into court, for the benefit of the owners of land to whom such awards have been made, by depositing with the clerk of court of such county cash in the amount of such award or awards."

That where property is taken or damaged for a public use without just compensation having been first made, payment is legally due the owner as of the date of the taking or damaging of the property and interest should be given from the date when the property is taken or damaged.

From a judgment of the District Court of Benson County, DePuy, J., the state highway commissioner and the members of the Board of County Commissioners of Benson County appeal.

MODIFIED AND REMANDED.

Opinion of the court by Christianson, Ch.J.