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Damages: Recovery of Special Damages Due to Land Being Made Unfit for Special Use

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his decision. There are clear precedents for the proposition that the existence of an identical issue is tested by necessity for the same probative facts.[15] The Court properly concluded that a mere difference in name between the two grounds does not prevent the operation of the full faith and credit clause when the facts by which both grounds must be established are the same.

J. THOMAS GURNEY, JR.

DAMAGES: RECOVERY OF SPECIAL DAMAGES DUE TO LAND BEING MADE UNFIT FOR A SPECIAL USE

Watson v. Jones, 36 So.2d 788 (Fla. 1948)

Defendant was sued for the wrongful cutting of ninety-seven pine trees which were on the land of the plaintiff. The latter claimed special damages in that the property had been acquired for a tourist and trailer park and the trees that were cut had a peculiar value for ornamental and shade purposes, due to the intended use of the premises. Defendant contended that the computation should be based on the value for any normal purpose rather than for the specific use chosen by the plaintiff. The jury found a verdict of $3500 for the plaintiff. On motion for new trial the lower court granted a remittitur of $1000 in lieu of a new trial. Upon acceptance by plaintiff, defendant appealed on the ground that a verdict of even $2500 was excessive. HELD, the correct measure of damage is the injury done to the land in the light of the specific purpose intended and not merely the difference in its market value for normal user before and after the cutting. Judgment affirmed.

The usual measure of damages in an action to recover for permanent injury to real property is the difference in the fair value of the property immediately before and immediately after the injury.[1] In Florida,[2]

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[15]Wilson Cypress Co. v. Atlantic C. L. R. R., 109 F.2d 623 (C. C. A. 5th 1940); Liken v. Shaffer, 64 F. Supp. 432 (N. D. Iowa 1940); Coleman v. Coleman, 157 Fla. 515, 26 So.2d 445 (1946).

[1]Atlantic C. L. R. R. v. Saffold, 130 Fla. 598, 178 So. 288 (1938); Gasque v. Ball, 65 Fla. 383, 62 So. 215 (1913).

[2]Atlantic C. L. R. R. v. Saffold, 130 Fla. 598, 178 So. 288 (1938).

however, and in certain other jurisdictions,[3] upon destruction of improvements or crops possessing a value independent of the realty on which they stand or grow, the measure of damages is this value. Other jurisdictions have held that recovery may be had for either the diminution in the value of the land or the value of the specific item destroyed[4] when regarded independently. In the instant case, counsel made a wise choice of remedy; had the action been based on trespass de bonis asportatis[5] or on trover for conversion,[6] instead of on trespass quare clausum fregit, the measure of damages would have been merely the value of the trees at the time of the wrongful taking and removal.

In computing damages for trespass quare clausum fregit the inquiry will not be limited either to the diminution of the market value of the land or to the market value of the property destroyed when the property has a special intrinsic value due to the use for which it is intended.[7] In order to recompense the injured party adequately, the proposed use[8] and even the possible use[9] of the property must be considered. This rule is particularly adaptable to cases involving the wrongful destruction of shade or ornamental trees, inasmuch as such trees may well have little commercial value and their severance from the realty often has no effect on the market value of the tract of land.[10]

In *Florida East Coast Ry. v. Peters*,[11] the Supreme Court of Florida applied to tort actions the contract rule of foreseeability, namely, that recoverable damages are limited to those that would occur in the normal course of events or that may reasonably be supposed to have been in the contemplation of the parties. Upon reversal and retrial[12] the Court indicated that it did not mean to place this limitation on trespass actions, saying that the rule was applicable to negligence actions, as distinguished

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[3]Grell v. Lumsden, 206 Iowa 166, 220 N. W. 123 (1928); Reed v. Mercer County Fisc. Ct., 220 Ky. 646, 295 S. W. 995 (1927); Tripp v. Bagley, 75 Utah 42, 282 Pac. 1026 (1929); Honaker Lumber Co. v. Kiser, 134 Va. 50, 113 S. E. 718 (1922).

[4]Atchison, T. & S. F. Ry. v. Geiser, 68 Kan. 281, 75 Pac. 68 (1904); Thompson v. Boydstun, 189 Okla. 530, 118 P.2d 236 (1941).

[5]Garrett v. American Fruit Growers, Inc., 135 Fla. 398, 186 So. 269 (1938).

[6]Skinner v. Pinney, 19 Fla. 42, 53 (1882).

[7]4 SUTHERLAND, DAMAGES 2981 (3d ed. 1903).

[8]Babcock v. Postal Tel. Co., 117 S. C. 304, 109 S. E. 116 (1921); Stephensville, N. & S. T. Ry. v. Baker, 203 S. W. 385 (Tex. Civ. App. 1918).

[9]Shell Pipe Line v. Svrcek, 37 S. W.2d 297 (Tex. Civ. App. 1931).

[10]Gilman v. Brown, 115 Wis. 1, 91 N. W. 227 (1902).

[11]72 Fla. 311, 371, 73 So. 151, 168 (1916).

[12]*See* Florida E. C. Ry. v. Peters, 77 Fla. 411, 426, 83 So. 559, 564 (1919).